United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

(3)

103

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,311

ROBERT I. SARBACHER,

Appellant,

v.

DEXTER L. KOHN, *et al.*,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX

FRIEDLANDER, FRIEDLANDER
& BROOKS
920 Woodward Building
733 - 15th Street, N.W.
Washington, D.C. 20005
Attorneys for Appellants

Washington, D. C. · THIEL PRESS · 202 · 393-0625

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[Caption Omitted in Printing]

C. A. No. 3200-65

Defendants :

COMPLAINT TO SET ASIDE DEED OF TRUST AND CANCEL NOTE

1. The Plaintiff is a resident of the District of Columbia and a citizen of the United States.

2. The Defendants, Dexter M. Kohn and Coleman L. Diamond, are trustees under a deed of trust as hereinafter more fully described.

3. The Defendant, Hamby, and the corporation Defendant, Hamby, are named as the holder of the note hereinafter more fully described.

4. On the 13th day of March 1965, the Plaintiff herein executed a note and a deed of trust to secure said note, and under the terms of said deed of trust, the trustee Defendants, Dexter M. Kohn and Coleman L. Diamond, were named as the trustees thereunder.

5. That the said deed of trust referred to a $450,000.00 note for money loaned on the property described as Lot No. 31 in Daniel C. Roper's subdivision of part of Block numbered Five (5), "Belair Heights", as per plat recorded in Liber 74 at Folio 175 in the Office of the Surveyor for the District of Columbia; the said property being now known for assessment and taxation purposes as Lot No. 31 in Square No. 2502.

6. That the said note was improperly drawn, should not

have been made, and was the result of a transaction described as follows:

(a) Plaintiff avers that on or about the 26th day of January, 1965, he entered into an agreement for the purchase of 93,179 shares of United Federal Life Insurance Company, an insurance company chartered and organized under the laws of the state of Texas; 2,500 shares of United Life Insurance Company, an insurance company chartered and organized under the laws of the state of Texas; 221,762 shares of Southwest Union Life Insurance Company, an insurance company chartered and organized under the laws of the state of Texas; and 65,000 shares of Home Fidelity Life Insurance Company, an insurance company chartered and organized under the laws of the State of Missouri. Plaintiff alleges that sellers under such agreement were Floyd L. Shelman and Byron Prugh and the buyers under such agreement were the Plaintiff, James G. Ryan, Paul B. Brine, Jr., and Hudson K. Gilliland. Plaintiff also avers that under the terms of said agreement the stock purchased by the buyers was purchased subject to a mortgage on said stock held by the Central States Southeast and Southwest Areas Pension Fund in the amount of $1,800,000.00.

As additional consideration for the purchase of the aforementioned stock subject to the stated mortgage thereon the Plaintiff collateralized a $450,000.00 loan made by Thrift Credit Corporation, a New York corporation, to the sellers under such

agreement, namely, Shelman and Prugh, by executing a deed on the property known as 2503 Tracy Place Northwest, Washington, D. C. to the Thrift Credit Corporation, and further by assigning a first lien mortgage in the approximate amount of $50,000.00 to Thrift Credit Corporation, and along with a second mortgage owned by the Plaintiff on property known as the Bradley Blvd. Property in Bethesda, Maryland. These particular assets shall be hereinafter referred to respectively as the "Tracy Place Property", the "Koyer First Mortgage" and the "Bradley Blvd. Second Mortgage". The value of said assets which Plaintiff assigned or deeded to Thrift Credit Corporation have an approximate total value of $200,000.00. The agreement with Shelman and Prugh as referred to above contained additional terms and obligations which are not relevant to this cause of action.

(b) Plaintiff alleges that the terms and conditions of the agreement were carried out and completed and the Plaintiff became an owner of an equity interest in the various blocks of stock in the four insurance companies as referred to in foregoing paragraphs. Plaintiff further avers that on or about the 14th day of August 1965, he entered into a certain agreement with the Defendant, C. A. Hamby, wherein the Plaintiff's equity interest was recited and acknowledged by the Plaintiff and the Defendant, C. A. Hamby, and the Plaintiff's financial difficulty regarding his payment of obligations as assumed by him along with the conditions under the contract were recited and acknowledged and Defendant

C. A. Hamby's desire to secure the Plaintiff's equity position was recited. In addition to the recitations referred to and on the basis of such recitations and acknowledgements by the parties it was agreed between the Plaintiff and Defendant C. A. Hamby and the Plaintiff did assign to the Defendant C. A. Hamby a fifty percent interest in and to his equity position as consideration for the Defendant C. A. Hamby's efforts in securing the Plaintiff's granted the Defendant C. A. Hamby an option for the remaining fifty percent interest in and to his equity position. Said option thereby granting the Defendant C. A. Hamby the right to acquire the additional fifty percent of the Plaintiff's interest by returning to the Plaintiff all of his collateral which had been "pledged" to Thrift Credit Corporation under the terms of the agreement.

(c) Plaintiff says that the Defendant C. A. Hamby after entering into the agreement with the Plaintiff thereafter asserted his efforts, time, and money in securing title and ownership of the collateral assigned by the Plaintiff to Thrift Credit Corporation under the terms of the agreement. Plaintiff says that the Defendant, C. A. Hamby, did further assert his interest to all parties including the Plaintiff as being a 100 percent interest and all which entitled him to take on the management and direction of the insurance companies referred to above. The Defendant, C. A. Hamby, and the Defendant's brother took positions on the

Board of Directors in each of the insurance companies in question, and the Defendant C. A. Hamby, acting as the responsible interest owner in said companies, undertook the employment of an attorney at law to represent said insurance companies in actions initiated by the Commissioner of Insurance of the State of Texas, and further initiated action for a special called meeting of stockholders of United Federal Life Insurance Company. At the time said special stockholders meeting convened, the Defendant asserted full 100 percent ownership of the stock and equity in said stock which had formerly been owned by the Plaintiff. Immediately upon the assertion of the 100 percent equity interest by the Defendant, C. A. Hamby, the Plaintiff personally and by his attorney, demanded the Defendant C. A. Hamby to return, release, and convey to the Plaintiff the collateral which had been previously encumbered by the Plaintiff to Thrift Credit Corporation, which the Defendant C. A. Hamby had subsequently obtained from said Thrift Credit Corporation. The Plaintiff's demand and request for the return of his collateral was made pursuant to the terms of the contract and the obligation of the Defendant C. A. Hamby as set forth therein. The Defendant failed and refused to convey such collateral being the "Tracy Place Proporty", the "Koyer First Mortgage", and the "Bradley Blvd. Second Mortgage" and the Defendant C. A. Hamby still fails and refuses to perform his said obligation under the terms of the contract for which your Plaintiff says that he has no adequate remedy at law, and on such basis sues the Defendant, C. A.

Hamby, for specific performance of his agreement as evidenced by the contract made.

(d) Plaintiff says that the Defendant, C. A. Hamby, is the principal stockholder, officer, director, and managing party of a Texas Corporation known as Hamby Industries, Inc. Plaintiff would further show that the Defendant, C. A. Hamby, did convey his right, title and interest in and to the various items of collateral referred to herein and sued for by the Plaintiff to said Defendant, Hamby Industries, Inc. Plaintiff avers that such conveyance by Defendant C. A. Hamby to Defendant Hamby Industries, Inc. was made with full knowledge of each of the Defendants of the rights and interest asserted by the Plaintiff herein. Plaintiff further says that Defendant Hamby Industries, Inc. is not an innocent purchaser of the right, title and interest of the Defendant C. A. Hamby in foreclosing on the deed of trust which ostensibly secures said note, and Plaintiff further prays that during the pendency of this action a temporary injunction issue to enjoin and restrain the Defendants from the acts and conduct aforesaid.

Mark P. Friedlander

DISTRICT OF COLUMBIA: SS

MARK P. FRIEDLANDER, being first duly sworn, on oath, deposes and says that he has read the foregoing Complaint by him subscribed, and knows the contents thereof, that he is informed and believes that the allegations in said Complaint are true.

_____
Mark P. Friedlander

SUBSCRIBED AND SWORN TO before me this _____ day of _____ 196_.

_____
Notary Public

_____
My Comm. Expires

FRIEDLANDER & FRIEDLANDER
Mark P. Friedlander
Mark P. Friedlander, Jr.
Blaine P. Friedlander
Harry P. Friedlander
1210 Shoreham Bldg.
806 15th St., N. W.
Washington, D. C. 20005
Na 8 - 1116
Attorneys for Plaintiff

[Certificate of Service Omitted in Printing]

Civil Action No. 3200-65

ANSWER OF DEFENDANTS DEXTER M. KOHN AND COLEMAN L. DIAMOND, TRUSTEES

First Defense

The complaint fails to state a cause of action against these defendants upon which relief can be granted.

Second Defense

Answering the numbered paragraphs of the complaint, defendants Dexter M. Kohn and Coleman L. Diamond, Trustees:

1, 2, 3, 4. Admit the allegations of paragraphs 1, 2, 3 and 4 of the complaint.

5, 6. Do not have sufficient information and knowledge to form a belief as to the allegations of paragraphs 5 and 6 of the complaint and cannot, therefore, admit or deny the same.

7. Admit the allegations of paragraph 7 of the complaint.

8, 9. Do not have sufficient information and knowledge to form a belief as to the allegations of paragraphs 8 and 9 of the complaint and cannot, therefore, admit or deny the same.

WHEREFORE, having fully answered, defendants Dexter M. Kohn and Coleman L. Diamond, Trustees, pray that the complaint be dismissed with costs.

Dexter M. Kohn

Dexter M. Kohn, Trustee

/s/

Coleman L. Diamond, Trustee
800-17th Street, N.W.
Washington 6, D. C.,
In proper person.
Phone: 298-9292

PROOF OF SERVICE

Copy of the foregoing Answer of Defendants Dexter M. Kohn and Coleman L. Diamond, Trustees, was mailed, postage prepaid, this 11th day of January, 1966, to Mark P. Friedlander, Esq., 1210 Shoreham Building, Washington, D. C., Attorney for Plaintiff, and to Ernest C. Tucker, Esq., 2000 P Street, N.W., Washington, D. C., Attorney for Defendants C. A. Hamby and Hamby Industries, Inc.

Dexter M. Kohn
Dexter M. Kohn, Trustee

/s/
Coleman L. Diamond, Trustee

[Caption Omitted in Printing]

Civil Action No. 3200-65

A N S W E R

The Defendants, C. A. Hamby and Hamby Industries, Inc., appear specially through their Attorney, Ernest C. Tucker, and answer to the Complaint as follows:

First Defense

The Complaint fails to state a claim against the Non-Resident Defendants upon which relief can be granted.

Second Defense

1. The Defendants, C. A. Hamby and Hamby Industries, Inc., deny that this Court has jurisdiction over them or the subject matter alleged in the Complaint.

2. By way of affirmative defense to the jurisdiction of this Court, the Defendants affirmatively allege that they are non-residents and that they have not been served personally within the jurisdictional limits of this Court; the Defendants further allege affirmatively that the action against them is one in rem and that the Plaintiff has not taken the necessary action to subject the Defendants to the Court's jurisdiction.

WHEREFORE, Defendants pray judgment that the Plaintiff take nothing by reason of the Com[illegible] on file herein but that the same be dismissed with cost.

Ernest C. Tucker
Attorney for Defendants, C. A. Hamby and Hamby Industries, Inc.

[Certificate of Service Omitted in Printing]

[Caption Omitted in Printing]

Civil Action No. 3200-65

CERTIFICATE OF READINESS

This is to certify that the above-entitled cause is actually ready for trial.

FRIEDLANDER & FRIEDLANDER

By: _____
Mark P. Friedlander

1210 Shoreham Bldg.
Address Washington, D. C.

_____
Attorney for Plaintiff

NOTE:

Unless opposition to the above Certificate of Readiness is filed within ten days from date of service, the cause shall be placed on the Ready Calendar, pursuant to Local Rule 11(d), as amended, April 4, 1962.

I hereby certify that I have served a copy of the above Certificate of Readiness by (mailing)(delivering) a copy thereof on the 1st day of April, 1966 to: Dexter M. Kohn and Coleman L. Diamond, Trustees, 800 - 17th St., N.W., Washington 6, D. C., ~~and Ernest C. Packer, Esq. 2000 P St., N. W., Washington, D. C., attorney~~ for defendants C. A. Hamby and Hamby Industries, Inc.

_____
Attorney for

_____
Attorney
Mark P. Friedlander

[Caption Omitted in Printing]

C.A. No. 3200-65

SUGGESTION OF BANKRUPTCY

Counsel for Defendants suggest bankruptcy of Hamby Industries, Inc., Bankruptcy No. BK 3-572, United States District Court for the Northern District of Texas, Dallas Division.

Counsel will await for instructions from receiver in bankruptcy.

/s/

Ernest C. Tucker
Attorney for Defendant
CO. 5-7003

THIS IS TO CERTIFY That copies of the foregoing Suggestion were mailed, postage prepaid, to Mark P. Friedlander, Attorney for Plaintiff, 1210 Shoreham Building, 806-15th Street, N.W., Washington, D.C. and Dexter M. Kohn and Coleman L. Diamond, Trustees, 800-17th Street, N.W., Washington, D.C., this 11th day of May, 1966.

/s/

Ernest C. Tucker
Suite 605
2000 P Street, N.W.
Washington, D.C.

[Caption Omitted in Printing]

[illegible]

Now comes Philip I. Palmer, Jr., Trustee in Bankruptcy of Hamby Industries, Inc., and moves the Court for leave to intervene herein, to be substituted as party defendant in place of Hamby Industries, Inc., and to file an Amended Answer herein and a counterclaim, a copy of which is attached hereto as Exhibit "A", and as grounds therefor says:

[a] Since the filing of this action and of the Answer of the defendant, Hamby Industries, Inc., the latter has been adjudicated a bankrupt as an alter ego of Universal Credit Cards, Inc. in the United States District Court for the Northern District of Texas, Dallas Division, No. BK 3-572; that your movant, Philip I. Palmer, Jr., has been appointed and qualified as Trustee in Bankruptcy in said proceeding.

[b] Your movant as Trustee in Bankruptcy has, by operation of law, been vested with title to the $150,000.00 promissory note and the security therefor which are the subject of this action, and has been authorized by said Bankruptcy Court to intervene in this action to defend the same and to assert and prosecute a claim upon the said note and the security for its payment.

[c] The Answer heretofore filed herein on behalf of Hamby Industries, Inc. did not fully respond to the averments of the Complaint but rather consisted principally of a denial of the jurisdiction of the Court. The Trustee desires to concede the jurisdiction of the Court,

to answer fully the averments of the Complaint and to assert a counterclaim which is or may be a compulsory counterclaim.

JACKSON, GRAY & LASLEY

By /s/
John L. Bloodly

By /s/
Robert M. Gray
Attorneys for Kooby Industries, Inc. and Philip E. Palmer, Jr., Trustee in Bankruptcy of Kooby Industries, Inc.
1701 K Street, N. W.
Washington, D. C. 20006

[Certificate of Service Omitted in Printing]

[Caption Omitted in Printing]

MOTION TO WAIVE THE APPLICATION OF RULE 13

Comes now the Plaintiff in the above entitled cause and moves this Honorable Court to waive the application of Rule 13 of the local rules of this Court, for the following reasons:

1. That one of the parties has been adjudicated a bankrupt and, as a result thereof, the cause has been removed from the ready calendar.

2. That there will be a delay in the prosecution of this cause by the complication of the bankruptcy and other related matters.

3. That there are now pending in the courts of Texas matters involving the same subject matter, which should be disposed of in that jurisdiction.

FRIEDLANDER & FRIEDLANDER

By: _____
Mark P. Friedlander

FRIEDLANDER & FRIEDLANDER
Mark P. Friedlander
Mark P. Friedlander, Jr.
Blaine P. Friedlander
Harry P. Friedlander
1210 Shoreham Building
806 - 15th Street, N. W.
Washington, D. C. 20005
Attorneys for Plaintiff.

THIS IS TO CERTIFY That copies of the foregoing Motion, with attached points and authorities in support thereof, have been served upon the attorneys for the Defendants, by mailing the same, postage prepaid, to: Dexter M. Kohn and Coleman M. Diamond, Trustees, 800 - 17th Street, N. W., Washington D. C. 20006, and Robert M. Gray, Esq., 1701 "K" Street, N. W., Washington, D. C. 20006, on the 11th day of January, 1967.

JAN 12 1967

Mark P. Friedlander

CLERK'S OFFICE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
WASHINGTON, D. C., 20001

SARBACHER

vs.

KOHN ET AL

Jan 25, 1967
Date

Civil Action
Habeas Corpus No. 3200-65

Dear Mr. _____

In the above-entitled cause please be advised that on Jan 25, 19 67, Judge McGuire ruled as follows:

" motion to waive application of Rule 13 granted until Oct 1, 1967

JAN 27 1967

ROBERT M. STEARNS, CLERK

[Caption Omitted in Printing]

ORDER GRANTING MOTION FOR LEAVE TO INTERVENE, TO FILE AMENDED ANSWER AND COUNTERCLAIM, DIRECTING NOTATION OF WITHDRAWAL OF MOTION FOR SUMMARY JUDGMENT, AND EXTENDING TIME FOR PLAINTIFF TO ANSWER COUNTERCLAIM

This cause coming on to be heard at this term upon the Motion of Philip I. Palmer, Jr., Trustee in Bankruptcy of Hamby Industries, Inc., seeking leave to intervene herein and to be substituted as a party defendant in the place and stead of Hamby Industries, Inc. and for leave to file an Amended Answer and Counterclaim, and upon the plaintiff's Motion for Summary Judgment, upon the argument of counsel, during the course of which counsel for plaintiff announced that he would withdraw the Motion for Summary Judgment, and upon consideration of the foregoing, it is this . day of February, 1967

ORDERED that Philip I. Palmer, Jr., Trustee in Bankruptcy of Hamby Industries, Inc., by appointment of the United States District Court for the Northern District of Texas, Dallas Division, in Bankruptcy No. 3-572, be and he hereby is given leave to intervene herein and to be substituted as a party defendant in the place and stead of Hamby Industries, Inc., and is further given leave to file the proposed Amended Answer and Counterclaim, a copy of which having been attached to his Motion, and it is

FURTHER ORDERED that the plaintiff's Motion for Summary Judgment be noted as withdrawn and that the plaintiff be allowed thirty (30) days from the date hereof within

which to file his Answer to the Counterclaim of Philip I. Palmer, Jr., Trustee in Bankruptcy of Hamby Industries, Inc.

JUDGE

Copy of the foregoing proposed Order mailed, postage prepaid, this day of February, 1967, to Mark P. Friedlander, Mr., Esq., attorney for plaintiff, 1210 Shoreham Building, Washington, D. C. 20005; and to Dexter M. Kohn and Coleman L. Diamond, Trustees, 800 - 17th Street, N. W., Washington, D. C. 20006.

John L. Laskey
JACKSON, GRAY & LASKEY
1701 K Street, N. W.
Washington, D. C. 20006

Attorneys for Hamby Industries, Inc. and Philip I. Palmer, Jr., Trustee in Bankruptcy of Hamby Industries, Inc.

[Caption Omitted in Printing]

Civil Action No. 3200-65

AMENDED ANSWER AND COUNTERCLAIM OF PHILIP I. PALMER, JR., TRUSTEE IN BANKRUPTCY OF HAMBY INDUSTRIES, INC., TO COMPLAINT TO SET ASIDE DEED OF TRUST AND CANCEL NOTE

FIRST DEFENSE:

The Complaint fails to state a claim against this defendant upon which relief can be granted.

SECOND DEFENSE:

Answering the paragraphs of the Complaint, this defendant says as follows:

1. He admits the plaintiff is a citizen of the United States but is without information or knowledge sufficient to form a belief as to whether he is a resident of the District of Columbia.

2. The averments of paragraph 2 are admitted.

3. This defendant admits the averments of paragraph 3 of the Complaint.

4. This defendant admits the averments of paragraph 4 of the Complaint, except he says the note secured by the Deed of Trust therein referred to was dated January 26, 1965 rather than March 13, 1965 as averred and he refers to the Deed of Trust itself for a full and exact description of its terms and conditions.

5. The averments of paragraph 5 of the Complaint are admitted.

6. This defendant denies that the note in question was improper-

ly drawn and should not have been made as alleged in paragraph 6 of the Complaint; admits the averments of paragraph 6(a) and refers to the agreement described therein for a full and exact description of its terms and conditions; says that he is without information or knowledge sufficient to form a belief as to the truth of the averments contained in the unnumbered paragraph following paragraph 6(a) or of the averments contained in paragraphs 6(b) and 6(c) of the Complaint. Answering the averments of paragraph 6(d) of the Complaint, this defendant says that he admits that he is the holder of the promissory note in question and entitled to the benefit of the security for the payment of the same and denies the remaining averments of paragraph 6(d).

7. The averments of paragraph 7 of the Complaint are admitted.

8-9. The averments of paragraphs 8 and 9 are denied.

COUNTERCLAIM ON PROMISSORY NOTE
AND FOR FORECLOSURE

For counterclaim against the plaintiff, the said Philip I. Palmer, Jr., Trustee in Bankruptcy of Hamby Industries, Inc., says as follows:

1. That he is the duly appointed, qualified and acting Trustee in Bankruptcy of Hamby Industries, Inc.

2. That as such Trustee, he is the holder and owner of a certain promissory note dated January 26, 1965, made by Robert I. Sarbacher, et al., payable to Floyd L. Shelman and Byron Prugh in the amount of $450,000.00 with interest at the rate of 6% per annum, a copy of which ote is attached hereto as Exhibit 1 and made a part hereof; that the

makers of said note have made no payments on account thereof and the same is now in default.

3. To secure the payment of said note, the said Robert I. Sarbacher made, executed and delivered a Deed of Trust conveying to the defendants, Dexter M. Kohn and Coleman L. Diamond, as Trustees, the property being known and described as follows:

> "Lot Numbered Thirty-One (31) in Daniel C. Roper's subdivision of part of Block numbered Five (5), "Belair Heights", as per plat recorded in Liber 74 at folio 175 in the Office of the Surveyor for the District of Columbia.
>
> Said property being now known for assessment and taxation purposes as Lot numbered Thirty-one (31) in Square numbered Twenty-five Hundred Two (2502)."

Said Deed of Trust was recorded among the land records of the District of Columbia on March 15, 1965 in Liber 12376 at folio 398. A copy of said Deed of Trust is attached hereto as Exhibit 2 and made a part hereof.

4. That the payments of principal and interest on said note are in default and there is due and unpaid thereon the sum of Two Hundred Seventy-Seven Thousand Five Hundred Dollars [$277,500.00], with interest thereon at the rate of six percent [6%] per annum.

WHEREFORE, the counterclaimant prays as follows:

1. For judgment in the amount of $277,500.00 plus interest at the rate of 6% per annum and a reasonable attorney's fee;

2. For judgment authorizing and directing the defendant-trustees to sell the real estate hereinabove described as in said Deed of Trust

provided in the event the money judgment be not paid in full.

3. And for such other and further relief as to the Court may seem just and proper.

JACKSON, GRAY & LASKEY

By /s/
John D. Hawley

By /s/
Robert L. Gray

Attorneys for Petitioners, Husky Industries, Inc. and Philip I. Zeltzer, Jr., Trustee in Bankruptcy of Husky Industries, Inc.
1701 K Street, N. W.
Washington, D. C. 20006

[Caption Omitted in Printing]

Civil Action No. 3200-65

CERTIFICATE OF READINESS

This is to certify that the above-entitled cause is actually ready for trial.

FRIEDLANDER & FRIEDLANDER

By: _____
Mark P. Friedlander
1210 Shoreham Building
806 - 15th Street, N. W.
Address
Washington, D. C. 20005

_____
Attorney for Plaintiff.

NOTE:

Unless opposition to the above Certificate of Readiness is filed within ten days from date of service, the cause shall be placed on the Ready Calendar, pursuant to Local Rule 11(d), as amended, April 4, 1962.

I hereby certify that I have served a copy of the above Certificate of Readiness by (mailing) ~~(xxxxxxxxxx)~~ a copy thereof on the 6th day of November, 1967 to: Dexter M. Kohn and Coleman L. Diamond, Trustees, 800 - 17th St.,N.W.,Washington,DC 20006, and Ernest L. Ruffner,Esq. 1701 "K" St.,N.W., ~~Washington,D.C. 20006.~~

_____

_____
Attorney for

_____
Attorney for Plaintiff
Mark P. Friedlander

[Caption Omitted in Printing]

Civil Action No. 3200-65

OPPOSITION TO
CERTIFICATE OF READINESS

Comes now the intervening defendant, Philip I. Palmer, Jr., Trustee, and opposes the certificate of readiness filed by the plaintiff herein, and as grounds therefore states that:

1. Although this case was filed on December 22, 1965, he has only been a party since the 8th day of February, 1967.

2. The factual background of this case is very complex and the amount involved is substantial.

3. Based upon the present posture of this case, extensive discovery will have to be undertaken to adequately prepare for trial.

JACKSON, GRAY & LASKEY

By Ernest L. Rafter

1701 K Street, N. W.
Washington, D. C. 20006
628-0480
Attorneys for Defendant
Philip I. Palmer, Jr., Trustee

[Certificate of Service Omitted in Printing]

[Caption Omitted in Printing]

Civil Action No. 3200-65

RECOMMENDATION OF PRETRIAL EXAMINER

Upon consideration of intervening defendant's opposition to the Certificate of Readiness filed by plaintiff,

and oral argument thereon,

it is this 8th day of December, 19 67,

RECOMMENDED that said opposition be sustained.

ASST. PRETRIAL EXAMINER

NOTE: Under Local Civil Rule 9(i)(1) the above Recommendation becomes order of the Court unless objections thereto are filed within days in conformity with Rule 9(i)(2).

COPIES TO COUNSEL (in person) 12/8/67
(by mail) (Date) (Initials)

[Caption Omitted in Printing]

C.A. No. 3200-65
MOTION TO WAIVE THE REQUIREMENTS OF LOCAL RULE 13 AND TO CONTINUE THE CAUSE PENDING THE DISPOSITION OF A COMPANION CASE IN TEXAS.

Comes now the plaintiff in the above-entitled cause and moves this honorable Court to waive the provisions of Rule 13 and allow the case to pend without further action until the disposition of the companion case now pending in Texas for the following reasons:

1. The witnesses and the parties are all located out of the District of Columbia except for the trustees named.

2. Plaintiff is advised that the cause now pending in Texas will be disposed of, which disposition will be res judicata of the pending litigation.

3. This case has for its purpose the prevention of foreclosure until after the validity of the note secured by the deed of trust has been fully determined.

Mark P. Friedlander

FRIEDLANDER & FRIEDLANDER
1210 Shoreham Bldg.
Washington, D. C.
Na 8 - 1116
Attorneys for Plaintiff

THIS IS TO CERTIFY That a copy of the foregoing Motion and the attached Points and Authorities was mailed, postage prepaid, to Jackson, Gray & Laskey, attorneys for Hamby Industries, Inc., 1701 K St., N. W., Washington, DC, 20006, and Dexter M. Kohn and Coleman L. Diamond, Trustees, 800 17th St., N. W., Washington, DC, 20006, this 16th day of May 1968.

Mark P. Friedlander

[Caption Omitted in Printing]

O R D E R

Upon consideration of the motion of Plaintiff to waive the requirements of local Rule 13 and to continue the cause pending the disposition of the companion case now pending in Texas, to wit, Robert I. Sarbacher v. C. A. Hamby et al, in the District Court of Dallas County, 101st Judicial District of Texas, Cause No. 65-8719-E, and the points and authorities in support of said motion, and there being no opposition thereto; and it appearing to the Court that the provisions of Rule 13 should be waived,

It is by the Court, this 14th day of June, 1968,

ORDERED, ADJUDGED and DECREED That the Plaintiff's motion to waive the requirements of Rule 13 of this Court and to continue the above captioned cause pending the disposition of the companion case in Texas — namely, Robert I. Sarbacher v. C. A. Hamby et al, in the District Court of Dallas County, 101st Judicial District of Texas, Cause No. 65-8719-E — or until the 2nd day of January, 1969, whichever is sooner — be and the same is hereby granted.

/s/ Cowen, J.

Judge

[Certificate of Service Omitted in Printing]

[Caption Omitted in Printing]

Civil Action No. 3200-65

ORDER

This cause having come on upon a preliminary calendar call, and it appearing to the Court that the cause should be disposed of, and counsel for both sides consenting thereto,

It is by the Court, this ____ day of November, 1969,

ORDERED, That the cause be placed on the ready calendar to be tried, but not before the 19th day of November, 1969; and after pretrial it is not to be placed on the daily assignment for trial prior to January 2, 1970.

_____

Judge

THIS IS TO CERTIFY That copy of the foregoing Order has been served upon the attorney for the Defendant, by mailing the same, postage prepaid, to: Robert M. Gray, Esq. [Jackson, Gray & Laskey], 1701 "K" Street, N. W., Washington, D. C. 20006, on the 6th day of November, 1969.

Friedlander & Friedlander

By:_____
Mark P. Friedlander
1210 Shoreham Building
806 - 15th Street, N. W.
Washington, D. C. 20005
Attorneys for Plaintiff

PRETRIAL STATEMENT

* * *

-4- THE INTERVENOR DEFENDANT PALMER seeks to effect collection of the note and to foreclose on the security given therefor. He asserts that he is now the holder in due course, or the holder for value, of the promissory note in question and that he is entitled to the benefits of the security for payment on the note.

He asserts that the said ~~note~~ promissory note of ~~date~~ Jan. 26, 1965 is now in default and there is due and unpaid thereon the sum of $275,500.00 with interest thereon at the rate of six percent per annum; that the $450,000.00 note dated Jan. 26, 1965, of which P was the maker and the deed or deeds of trust given as security for its payment were ~~not~~ made, executed and delivered without any condition whatsoever insofar as C. A. Hamby and Hamby ~~Industries~~ Industries, Inc. are ~~concerned~~ concerned; that in executing the agreement of Aug. 14, 19 between P and C. A. Hamby the latter was acting for himself alone; and denies C. A. Hamby either for himself or for Hamby~~Industries~~, Industr Inc. or for both of them exercised the option in said agreement of

-5- Aug. 14, 1965 so as to obligate them or either of them to return to o cause to be returned to P the collateral referred to in said agreemen

The intervening D therefore asks that the P's action be dismiss and he seeks judgment in the amount of $277,500.00 plus interest at t rate of 6% per annum and a reasonable attorney's fee and further seek authorization directing the sale of the realestate described in the

above mentioned deed of trust securing the promissory notein the event the money judgment be not paid in full.

* * *

Counsel for the Intervening D agrees that he will produce for use at the trial if available the following:

Copy of complaint (or declaration) or suit brought in N. Y against the Thrift Credit Corp.; the release ~~of~~ by Kenneth Gilliland of his interest in the insurance companies involved herein; agreements of Ryan and Brine in relation to their resignations as directors and officers of said insurance companies; letter from Ryan relating to his cessation of interests in the insurance companies; and minutes of meeting of Aug. of 1965 of the said insurance companies, and the record in the insurance companies' files ~~showing~~ assumption of complete control by Hamby.
as contended by P to show

The contracts of Jan. 26, 1965 and Aug. 14, 1965, the promissory note and the deeds of trust or mortgage securing said note may be admitted in evidence at the trial.

A deposition taken in Texas of one John Mark may be used as evidente in this action in accordance with prior arrangements made at the time said deposition was taken.

* * *

[Caption Omitted in Printing]

C.A. No. 3200-65

MOTION TO SET ASIDE FINDING OF FACT AND GRANT NEW TRIAL.

Comes now the plaintiff, Robert I. Sarbacher, and moves this honorable Court to set aside the Finding of Fact made herein, and to grant a new trial for the following reasons:

1. That the finding of the Court that no election by Hamby to acquire the remaining stock of the four insurance companies was contrary to the evidence.

2. That the Court's denial of the Motion of the plaintiff for additional time to present a witness on that issue was error and abuse of discretion.

3. The Court's failure to consider the unusual circumstances of this case as related to the additional time sought by the plaintiff to produce another witness or witnesses was an abuse of discretion.

Mark P. Friedlander

FRIEDLANDER, FRIEDLANDER & BROOKS
920 Woodward Building
Washington, D. C. 20005
Na 8 - 1116
Attorneys for Plaintiff

[Caption Omitted in Printing]

C. A. No. 3200-65

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case came on for trial, and upon consideration of the pleadings, the pretrial proceedings, the evidence and testimony adduced at trial, and the briefs and memoranda of law submitted by the respective parties in support thereof, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. This is an action to enjoin enforcement of a promissory note and foreclosure on security therefor.

2. The plaintiff, Dr. Robert I. Sarbacher, was at the time these proceedings were instituted, a resident of the District of Columbia, is now a resident of the State of California, having become such in May of 1969, and is an individual citizen of the United States.

3. The defendants, Dexter M. Kohn and Coleman L. Diamond, are Trustees under a deed of trust securing the promissory note, enforcement of which plaintiff seeks to enjoin.

4. The defendant, C. A. Hamby, is a resident of the State of Texas, initially represented herein by counsel who was allowed to withdraw and is not a necessary party to this action, having assigned all of his right, title and interest to the Intervening Defendant.

5. Defendant, Hamby Industries, Inc., was a non-resident corporation, organized and existing under the laws of the State of Texas, which has, since the filing of the original answer herein on its behalf, been adjudicated a bankrupt as an alter ego of Universal Credit Cards, Inc., in the United States District Court for the Northern District of Texas, Dallas Division, No. BK 3-572.

6. Intervening Defendant, Philip I. Palmer, Jr., is an individual citizen and resident of the State of Texas and has, since the filing of the original Answer on behalf of Hamby Industries, Inc., been granted leave to intervene and to be substituted as party defendant in place thereof.

7. The Complaint of Dr. Sarbacher which prayed for an injunction against defendants is based on an Agreement (Plaintiff's Exhibit No. 4), copies of which are attached to Plaintiff's Motion for Summary Judgment and Intervening Defendant's Trial Memorandum of Law herein. Hamby Industries, Inc., is not a party to this Agreement. However, plaintiff maintains that defendant C. A. Hamby exercised the "option" contained therein, and that Intervening Defendant, Philip I. Palmer, Jr., is thus estopped to enforce payment of the promissory note referred to hereinabove and to foreclose on the security therefor.

8. On January 26, 1965, Dr. Sarbacher entered into an Agreement (Plaintiff's Exhibit No. 1) for the purchase of certain shares of stock in four insurance companies from Floyd L. Shelman and Byron Prugh, subject to a mortgage on said stock held by theCentral States Southeast and Southwest Areas Pension Fund (of the Teamsters' Union) in the amount of $1,800,000.00.

9. As part of the consideration for said purchase, Dr. Sarbacher agreed to execute and did execute a promissory note in the amount of $450,000.00 of even date (Plaintiff's Exhibit No. 2).

10. Further under the terms of the aforesaid Agreement of January 26, 1965, Dr. Sarbacher agreed to execute a deed on property owned by him, known as 2503 Tracy Place, Northwest, Washington, D. C., and, on March 13, 1965, did, in fact, execute said deed to secure payment of the $450,000.00 note (Plaintiff's Exhibit No. 3).

11. On August 14, 1965, when the aforesaid $450,000.00 note was

in default, Dr. Sarbacher entered into an Agreement with C. A. Hamby, which provided in terms that Dr. Sarbacher thereby assigned the right of sole authority and management of his "equity position" in the four insurance companies, acquired by virtue of the aforesaid Agreement of January 26, 1965, to C. A. Hamby together with a 50% interest in and to his "equity position", as consideration for Hamby's efforts to attempt to secure Dr. Sarbacher's said "equity position".

12. The said Agreement of August 14, 1965, between Dr. Sarbacher and C. A. Hamby, also granted an "option" for the remaining 50% of Dr. Sarbacher's "equity position" in accordance with the following terms:

> "5. Dr. Robert I. Sarbacher does hereby grant and assign a fifty percent interest in and to his equity position to C. A. Hamby as consideration for his efforts and hereby grants an option for the remaining fifty percent to be paid as follows.
>
> The return to Dr. Robert I. Sarbacher of his collateral pledged to Thrift Credit Cirporation (sic), a New York corporation of Binghamton, New York."

13. On August 20, 1965, Thrift Credit Corporation, endorsee and holder in due course of the aforesaid $450,000.00 promissory note of January 26, 1965, negotiated, without recourse, all its "right, title and interest" in the said note and the underlying security therefor to the order of "C. A. Hamby and Hamby Industries, Inc." On April 12, 1966, Universal Credit Cards, Inc., was adjudicated as bankrupt under the provisions of the Bankruptcy Act in proceedings styled IN THE MATTER OF UNIVERSAL CREDIT CARDS, INC. No. BK 3-572 in the United States District Court for the Northern District of Texas, Dallas Division, and the Court entered an Order adjudging and declaring Hamby Industries, Inc., to be the "alter ego and a subsidiary

and adjunct and agent" of the bankrupt corporation, directing the Trustee i Bankruptcy of the Estate of Universal Credit Cards, Inc., Philip I. Palmer Jr., Intervening Defendant herein, to take over the assets of Hamby Industri Inc., including any and all causes of action held by Hamby Industries, Inc.; and to administer such corporation, its affairs and its property as part of the estate of Universal Credit Cards, Inc. (Intervening Defendant's Exhibits 3a. b. and c).

15. Thereafter, the $450,000.00 note came into the possession of the Intervening Defendant as Trustee in Bankruptcy for Hamby Industries, Inc and Palmer thereupon, on December 30, 1966, sought leave to intervene in the instant action, to be substituted as party defendant in the place of Hamby Industries, Inc., and to file on behalf of Hamby Industries, Inc., an Amended Answer and Counterclaim herein.

16. On January 31, 1967, C. A. Hamby assigned his individual interest, as co-payee on the $450,000.00 note with Hamby Industries, Inc., to Intervening Defendant (Plaintiff's Exhibits Nos. 4 and 5).

17. Dr. Sarbacher admitted at trial and in the pleadings that he had executed the $450,000.00 note and the deed of trust and that he was fully aware of the tenor of the instruments at the time he executed them; but stated he had relied on oral representations by others that they were not meant to bind him and that they would be returned to him, that he would be "protected", and that his execution of the said instruments "didn't matter."

18. When asked at trial why he felt himself to be not bound by the terms of the instruments, Dr. Sarbacher further testified that he had been told by others that the "option" in the Agreement of August 14, 1965, was to have been exercised, that it had, in fact, been exercised by C. A. Hamby and that he was therefore entitled to have the instruments returned to him and voided. Aside from Dr. Sarbacher's testimony as to what others told

him was to have been done, no testimony or evidence was introduced at trial or prior thereto establishing that the option in the said Agreement had been exercised so as to relieve him of his obligations as maker of the $450,000.00 note. Nor was there any evidence or testimony establishing that the instruments were for any reason unenforcible against him. Accordingly, the Court finds that plaintiff failed to introduce evidence or testimony sufficient to meet the burden of proof which rested upon him in the premises.

19. Dr. Sarbacher's testimony as to exercise of the option was sharply contradicted by the testimony and evidence adduced at trial by Intervening Defendant, which tended to establish that the option was, in fact, not exercised by C. A. Hamby. Indeed, Intervening Defendant argued strongly that the option could only have been exercised by the return by Hamby to Dr. Sarbacher of the note and deed of trust. Dr. Sarbacher's testimony as to C. A. Hamby's exercise of complete control to the extent of Dr. Sarbacher's "equity position" in the insurance companies was felt by the Court to be entirely consonant with the terms of the Agreement whereby Sarbacher granted Hamby the right to exercise complete control pursuant to the grant of a 50% interest in Sarbacher's equity position.

20. Moreover, evidence and testimony adduced by Intervening Defendant Palmer established conclusively that Hamby never acquired 100% ownership of Sarbacher's equity interest in the stock of the four insurance companies, that stock never having left the possession of the Teamsters' Union where, at all times pertinent to this cause, it continued to be held in the names of Shelman and Prugh, subject to a $1,800,000.00 lien.

21. Finally, Dr. Sarbacher's sole testimony that he had been an unwary victim of sharp practices by others was felt by the Court in view of extensive and uncontradicted evidence (Intervening Defendant's Exhibits 1 and 2) and testimony introduced by Intervening Defendant as to Dr. Sarbacher's

long and varied business and commercial experience, to be inherently incredibl

CONCLUSIONS OF LAW

1. Intervening Defendant Palmer, as Trustee in Bankruptcy of Hamby Industries, Inc., and assignee of C. A. Hamby's individual interest in the aforesaid $450,000.00 promissory note, is clothed with all the rights of a holder in due course as to the said note, having acquired same from "C. A. Hamby and Hamby Industries, Inc.", a holder through a holder in due course, Thrift Credit Corporation.

2. Plaintiff, Dr. Robert I. Sarbacher, having presented no evider proving exercise of the "option" contained in the aforesaid Agreement of August 14, 1965, between Dr. Sarbacher and C. A. Hamby, such as would entitl him to return of his collateral, i.e., the aforesaid $450,000.00 promissory note, is liable on the counterclaim of Intervening Defendant, Palmer, in the full amount claimed on the note.

3. The Court concludes, therefore, that the injunction which plaintiff Dr. Sarbacher prays should not issue, in that Dr. Sarbacher is a maker of the aforesaid $450,000.00 promissory note, now in the possession of Intervening Defendant, who is clothed with all the rights of a holder in due course, and that Intervening Defendant is entitled to recover judgment on th note in the full amount claimed, i.e., $277,500.00 plus interest at the rate of six percent (6%) per annum and reasonable attorneys' fees, that attorneys' fees in the amount of Twenty Thousand Dollars ($20,000.00) are reasonable in the premises; and in the event the said money judgment be not paid in full, for judgment authorizing and directing the defendant-trustees to sell the rea estate hereinabove described as in the aforesaid deed of trust provided.

4. The Court concludes that no relief should be granted plaintiff, Dr. Sarbacher, on the further ground that exhaustive evidence and testimony adduced in open court at the trial of this cause establish conclusively Dr. Sarbacher's extensive education, high degree of intelligence, long and varied

business and commercial experience, and full and complete awareness, kno and realization of the obligations which he voluntarily undertook in becoming a maker of the aforesaid $450,000.00 promissory note and in securing same by voluntarily and knowingly executing the aforesaid deed of trust.

George L. Hart, Jr., Judge

[Caption Omitted in Printing]

FILED
MAR 23 1970

ORDER FOR JUDGMENT

This action came on to be tried before the Court and the evidence adduced by the parties having been heard, and the Court having made Findings of Fact and Conclusions of Law filed herein on March 23 1970, it is by the Court this 23rd day of March, 1970,

ORDERED, ADJUDGED and DECREED that the Complaint herein be dismissed with respect to all of the defendants and that judgment be and the same is hereby entered in favor of the Intervening Defendant, Philip I. Palmer, Jr., and it is further

ORDERED, ADJUDGED and DECREED that the said Intervening Defendant, Philip I. Palmer, Jr., shall recover on his counterclaim against the plaintiff, Dr. Robert I. Sarbacher, the sum of Two Hundred Seventy Seven Thousand Five Hundred and no/100 dollars ($277,500.00), plus interest thereon at the rate of six percent (6%) per annum, together with attorneys' fees in the amount of ~~Twenty~~ One Thousand and no/100 dollars (~~$20,000.00~~ $1,000.00) and the costs of this action.

JUDGE

[Caption Omitted in Printing]

C.A. NO. 3200-65

AFFIDAVIT OF JAMES CLYDE STRAUS, III

STATE OF TEXAS)
COUNTY OF DALLAS) ss.

I, JAMES CLYDE STRAUS, III, being duly sworn, hereby depose and say:

1. I am a resident of the City and County of Dallas, State of Texas.

2. My present occupation is that of Chairman of the Board of Data Mate Corporation.

3. On or about July, 1965, I was a licensed real estate broker licensed by the State of Texas. On or about July, 1965, I introduced Dr. Robert I. Sarbacher to Mr. Charles A. Hamby for the purpose of entering into negotiations between Dr. Sarbacher and Mr. Hamby for the purchase and acquisition by Mr. Hamby of all of Dr. Sarbacher's interest in three life insurance companies known as United Federal Life Insurance Co., United Life Insurance Co., and Southwestern Union Life Insurance Company, and a Missouri life insurance company by the name of Home Fidelity Life Insurance Company.

4. After negotiations between the parties, the parties, Charles A. Hamby and Dr. Robert I. Sarbacher, entered into an agreement dated August 14, 1965, wherein Dr. Robert I. Sarbacher transferred to Charles Hamby fifty percent (50%)

of Dr. Sarbacher's interest in said life insurance companies and gave Mr. Hamby an option to purchase Dr. Sarbacher's remaining fifty percent (50%) interest in the insurance companies, and provided further that the purchase price for the remaining fifty percent (50%) interest would be the return to Dr. Robert I. Sarbacher of his collateral consisting of his home in Washington, D. C. which was pledged to Thrift Credit Corporation as part of the purchase by Dr. Sarbacher of his interest in the life insurance companies.

5. Sometime in the middle of August, 1965, I attended a meeting at the office of Charles Hamby which was located on Harry Hines Boulevard in Dallas, Texas. At this meeting there was present Charles A. Hamby, Dr. Robert I. Sarbacher, Mr. Carl Dunga Milton Kaufman, Mr. Paul Verhallen, Mr. Charles Moore and myself. It was at this meeting that Mr. Hamby stated to Mr. Milton Kaufman, who was the vice-president of Thrift Credit Corporation, a New York corporation, that Mr. Hamby was going to acquire complete ownership in all of said life insurance companies, and at that time Mr. Hamby paid to Mr. Kaufman the sum of Three Hundred Thousand Dollars ($300,000). Furthermore, at this conversation Mr. Hamby stated that he was taking over all of Dr. Robert I. Sarbacher's entire interest in all of the life insurance companies, and that he now owned the entire companies himself. I remember clearly Charles Hamby telling Dr. Robert I. Sarbacher at this meeting that "Well, that's it, Bob, nothing to worry about--you have your house back and everything else." At this conversation, Charles Moore was instructed by Mr. Hamby to

prepare all of the papers to evidence Charles Hamby's acquisition of Robert I. Sarbacher's entire interest in the life insurance companies and the return to Dr. Sarbacher of the collateral that he gave upon the purchase of his interest in the life insurance companies consisting of his residence located in Washington, D. C.

6. In addition to this one conversation, I was present with Charles Hamby in many other conversations where Mr. Hamby would state that he had taken over Dr. Sarbacher's entire interest in the life insurance companies and that he now owned the entire life insurance companies.

7. Approximately one month after the meeting described above, I recall specifically another meeting that was held in the offices of the life insurance companies located at 623 Exchange Bank Building, Dallas, Texas. At this meeting, there was present Mr. Charles A. Hamby, Dr. Robert I. Sarbacher, Carl Dungan, Stock Transfer Agent of Hamby Industries, Ruth J. McGwier, formerly Ruth Stammann formerly Secretary and Treasurer of the insurance companies and an attorney whose name I cannot recall, Art Clifton and myself. The purpose of this meeting was an attempt by Charles Hamby to obtain a loan from the insurance companies of approximately $140,000 to Mr. Art Clifton. Dr. Robert Sarbacher stated to Hamby that he could not authorize any such loan while he had any interest in the insurance companies. At this time, Charles Hamby stated to Robert Sarbacher that if Sarbacher would sign the checks for the loan to Art Clifton, Hamby would release Dr. Sarbacher's home in Washington, D. C. from the collateral given on the purchase of the life insurance companies by Robert Sarbacher and Mr. Hamby again reiterated that he was acquiring Sarbacher's interest in the life insurance companies. Actually, Charles

Hamby had already agreed a month prior to this meeting in the meeting that I have related above to acquire all of Robert Sarbacher's interest in the insurance companies and to release Robert Sarbacher's home from the collateral given as security as part of the purchase price for the insurance companies by Robert Sarbacher.

8. Concurrently with the statements being made by Charles Hamby to release Robert Sarbacher's collateral and to acquire all of his interest in the life insurance companies, a memorandum was signed evidencing this agreement and it was signed by both Robert Sarbacher and Charles Hamby at this meeting.

9. There were many occasions when Charles Hamby made it clear that Charles Moore was his representative and agent in connection with negotiations and acquisition of the insurance companies. On numerous occasions Hamby would say that he was relying on Charles Moore to represent him. On some occasions Charles Hamby would state that he could not do business without Charles Moore being present and also said that Charles Moore did all of his business for him. Charles Hamby also made statements to the general effect that whatever Charles Moore said with regard to the acquisition of the life insurance companies would be controlling.

10. If the Court grants a new trial or opens up the present trial for more testimony, pursuant to the request of Dr. Robert I. Sarbacher, I will come to Washington D. C. to testify to the facts and statements hereinbefore set forth in my affidavit and will testify as to other supplementary facts relating to the facts hereinbefore set forth in my affidavit.

11. The foregoing facts are within my own personal knowledge and if called upon as witness I can testify competently thereto.

Dated: March 26, 1970.

JAMES CLYDE STRAUS, III

STATE OF TEXAS :
: ss.
COUNTY OF DALLAS:

On March 26, 1970 before me, the undersigned, a Notary Public in and for said State, personally appeared JAMES CLYDE STRAUS, III, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

Signature Margaret Barnett

[Caption Omitted in Printing]

C.A. NO. 3200-65

AFFIDAVIT OF CARL DUNGAN

STATE OF TEXAS :
: ss.
COUNTY OF DALLAS:

I, CARL DUNGAN, being duly sworn, depose and say:

1. I reside at 3022 Hollandale, Dallas, Texas.

2. I am presently President of C & D Sales, a business which is presently being incorporated in the State of Texas.

3. During the year 1965 I aws employed as a Stock Transfer Agent of a company known as Viclaid Industries. During a portion of this period of time this corporation was owned by Mr. Charles A. Hamby and I in fact considered myself td be an employee of Mr. Charles Hamby.

4. It was the intention of Mr. Hamby upon acquisition of certain life insurance companies in which Dr. Sarbacher owned an interest to transfer these insurance companies to Viclaid Industries to make this corporation more attractive

as a public issue, and to create a higher selling price for the stock.

5. Charles Hamby requested that I assist him in the acquisition of four life insurance companies, known as United Federal Life Insurance Company, a Texas corporation, United Life Insurance Company, a Texas corporation, Southwest Union Life Insurance Company, a Texas corporation, and Home Fidelity Life Insurance Company, a Missouri corporation. He wanted me to check out these companies and he had promised to make me an officer of these companies in such time that he acquired them.

6. There were several meetings and negotiations with respect to the acquisition by Charles Hamby of the above described life insurance companies, including meetings and negotiations with Thrift Credit Corporation, a New York corporation located in Binghampton, New York.

7. After it appeared that all negotiations were ready for a final consummation of the acquisition, Mr. Hamby of the above described insurance companies, a meeting was held in Charles Hamby's office located in Dallas, Texas in or about the month of August, 1965. Present at this meeting was Mr. Charles A. Hamby, Paul Hamby, Milton Kaufman, the Vice-President of Thrift Credit Corporation, an attorney for Thrift Credit Corporation, whose name I do not recall, Mr. Jim Straus, Mr. Charles Moore and Dr. Robert I. Sarbacher and myself.

8. During this meeting in Mr. Hamby's office, the negotiations were completed for the acquisition by Charles Hamby of the above described life insurance companies. During

this meeting Mr. Charles Hamby formally purchased all interest of Dr. Robert I. Sarbacher and of all other persons in the four above described life insurance companies. At this meeting, Mr. Hamby gave a check in the sum of Three Hundred Thousand Dollars ($300.000) to Mr. Milton Kaufman, the then Vice - President of Thrift Credit Corporation, as part of the purchase price by Mr. Hamby for the acquisition of said life insurance companies. During this meeting, Charles Hamby formally announced that he was acquiring all of Robert I. Sarbacher's interest in the above described life insurance companies and that he was releasing all of the collateral which Dr. Robert I. Sarbacher pledged as part of the purchase price paid by Dr. Sarbacher for his interest in the life insurance companies, which collateral included Dr. Robert I. Sarbacher's residence in Washington, D. C. I can recall Charles Hamby generally stating to Dr. Robert I. Sarbacher that as part of the acquisition of all interest in the life insurance companies, that Charles Hamby was releasing all of Dr. Robert I. Sarbacher's collateral given by him in connection with his interest in the life insurance companies. In fact, I recall that the people at the meeting referred to Dr. Sarbacher's home by some specific name, the exact name of which I cannot recall at this time, and I know that the home was part of the collateral which was being released by Charles Hamby to Robert Sarbacher.

9. Approximately one month after the above described meeting in Mr. Hamby's office, a Board Meeting was held in the offices of the life insurance companies located in Dallas, Texas. Present at said meeting were Charles Hamby, Dr. Robert I. Sarbacher, Mr. Jim Straus, Miss Ruth Stammann, who is now known by the name of Ruth Stammann McGwier, who was Secretary and Treasurer of the life insurance companies, Charles Moore, Paul Hamby, Art Clifton, myself and, I

believe, there might have been an attorney present whose name I do not presently recall.

10. At this meeting there was discussion about the making of a loan of approximately $140,000 to Mr. Art Clifton from the life insurance companies' funds. Dr. Robert I. Sarbacher stated that he would not sign any checks for such loan until such time as Charles Hamby gave him a release on the collateral that he had given when he purchased his interest in the life insurance companies. Charles Hamby thereupon agreed to give him such release. As part of the agreement, Dr. Sarbacher agreed to stay on as an advisor for the insurance companies for an interim period of time, the exact length of time I do not recall. I specifically recall that at this meeting Charles Hamby stated that he was thereupon releasing all of Dr. Robert I. Sarbacher's collateral given in connection with acquisition of the life insurance companies which included Dr. Robert I. Sarbacher's residence in Washington, D. C. Thereupon the loan was, in fact, made to Art Clifton and Dr. Robert I. Sarbacher did in fact sign the check for the loan.

11. On practically every occasion where there were negotiations for the acquisition of the life insurance companies for Charles Hamby or any other interest or companies, Mr. Charles Moore was present. On numeroud occasions Charles Hamby stated that Charles Moore was his representative and was acting for him in connection with the acquisition of the life insurance companies and other interests as well.

12. There were numerous occasions after the meeting

in Hamby's office which I have hereinbefore described where Charles Hamby stated that he owned all of the life insurance companies and that he was preparing releases for Dr. Sarbacher's collateral.

13. If the Court grants a new trial or opens the case for additional evidence, I will be willing to travel to Washington, D. C. totestify to the foregoing facts.

14. The foregoing facts are within my own personal knowledge and if called upon as a witness I can and will testify competently thereto.

Dated: March 26, 1970.

Carl Dungan
CARL DUNGAN

STATE OF TEXAS :
: ss.
COUNTY OF DALLAS:

On March 26 1970 before me, the undersigned, a Notary Public in and for said State, personally appeared CARL DUNGAN known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

Signature Margaret Barnett

[Caption Omitted in Printing]

C.A. No. 3200-65

AFFIDAVIT OF RUTH J. McGWIER

STATE OF ~~TEXAS~~ ARIZONA :
: ss.
COUNTY OF ~~TARRANT~~ PIMA :

I, RUTH J. McGWIER, being duly sworn, hereby depose and say:

1. I am presently a resident of the City of Austin, County of Tarrant, State of Texas.

2. On or about August, 1964, to on or about August, 1966, I was the Secretary and Treasurer of the following three corporations which were all life insurance companies:

(a) United Federal Life Insurance Co.

(b) United Life Insurance Co.

(c) Southwestern Life Insurance Co.

3. My occupation as Secretary and Treasurer of said three corporations was a full time occupation, and my office address was 623 Exchange Bank Building, Dallas, Texas.

4. During the course of my duties as Secretary and Treasurer of said three corporations, I met Dr. Robert I. Sarbacher, who I knew to have obtained a proprietary interest in all of said three life insurance companies. Also, during

my period of time as Secretary and Treasurer of the three life insurance companies; I came to know a Mr. Charles A. Hamby.

5. During the month of September, 1965, while both Dr. Sarbacher and Mr. Hamby were conducting activities with respect to the three insurance companies, Mr. Hamby requested that I and Dr. Sarbacher sign two blank checks since all checks of the insurance companies had to be signed by Dr. Sarbacher and myself, and I was told by Mr. Hamby that said checks would be used for a business transaction, but he did not identify the transaction.

6. Pursuant to Charles Hamby's request, I and Dr. Sarbacher signed the two checks in blank, I believing at the time that when the business transaction was effectuated that evening Dr. Sarbacher would be present and would supervise the issuance of the checks.

7. The next morning, which was on or about September 16, 1965, I talked to Dr. Sarbacher who informed me for the first time that he was not present at any meeting on the previous evening which was supposed to be conducted by Mr. Hamby for the effectuating of the business transaction. Dr. Sarbacher and I both thereupon agreed that we should immediately stop payment on the two checks since we did not know what the two checks were issued for.

8. Dr. Sarbacher and I went downstairs to the bank on which the two checks were drawn, The Exchange Bank, and went to the teller's window and instructed the teller to

stop payment on the two checks, and signed a stop payment form.

9. While Dr. Sarbacher and I were at the teller's window in the bank, Mr. Charles Hamby came into the bank and walked over to our window for the purpose of cashing the two checks. At that time Dr. Sarbacher and I learned for the first time that the two check were being issued to a Mr. Art Clifton for the purpose of a substantial loan to Mr. Clifton from the insurance companies in the approximate total sum of $140,000. At that time Dr. Sarbacher and I informed Mr. Hamby that we had stopped payment on th checks and would not permit the checks to go through. Dr. Sarbacher stated at that time that he still felt he had an interest in the companies and, therefore, could not authorize the making of such loan to Mr. Clifton.

10. Mr. Hamby then requested that we go upstairs to the office to talk the matter over. Thereupon we went upstairs and had a meeting at my office located at 623 Exchange Bank Building, Dallas, Texas. Present at said meeting were the followin persons: Dr. Robert I. Sarbacher, Mr. Charles A. Hamby, Mr. Carl Dungan, the Sto Transfer Agent, of Hamby Industries, Mr. Charles Moore an attorney in the Dallas -- Ft. Worth area, whose name I do not read, Jim Straus and myself.

11. At this meeting Charles Hamby requested Dr. Sarbacher and I to sign the checks authorizing a loan to Art Clifton in the proximate sum of $140,000. Dr. Sarbacher stated at that time to Mr. Hamby and to all of of the persons present that before any such loan could be made to Art Clifton, Mr. Hamby would have to buy out all of Dr. Sarbacher's interest in the life insurance companies completely. Thereupon Charles Hamby stated that he would at such time exercise his option to acquire all of Dr. Sarbacher's interest in the three insurance companies and would thereupon return to Dr. Sarbacher the collateral that he gave on his personal residence in Washington,

D. C. Dr. Sarbacher acknowledged the statement of Mr. hamby and agreed that Mr. Hamby had thereupon acquired all of his interest in the three life insurance companies.

12. Thereupon a written memorandum was executed. A true copy of this memorandum is attached hereto marked Exhibit "A".

13. I witnessed the signing of this memorandum by both Dr. Robert I. Sarbacher and Mr. Charles A. Hamby.

14. I recall that the date of this meeting and the signing of this memorandum was September 16, 1965, because on that date I and other officers of the three insurance companies were served with legal papers consisting of a lawsuit by certain stockholders of the three insurance companies including a Temporary Restraining Order prohibiting the officers from making any loans from insurance company funds. I have with me now a copy of this lawsuit which bears a date of September 16, 1965.

15. Subsequent to this meeting on September 61, 1965, I continued working in my employment as Secretary and Treasurer of the three insurance companies, and I primarily worked under the supervision and control fo Mr. Charles Hamby until the Insurance Commissioner of the State of Texas took the three insurance companies over from Mr. Hamby, and then I worked under the Insurance Commissioner's control until on or about August of 1966.

16. During the time that I worked under the supervision and control of Mr. Charles A. Hamby, he repeated on numerous occasions that he was the sole owner of all three insurance companies, and on numerous occasions told me that Dr. Sarbacher had no interest whatsoever in any of the three

insurance companies. He further told me that Dr. Sarbacher did not even have any right to come into the office because he no longer had any interest in the three insurance companies.

17. Some time in August, 1965, Charles A. Hamby told me that Charles Moore was acting for Mr. Hamby as his representative and agent to acquire the three insurance companies. He also stated that Carl Dungan was also acting as his representative to acquire the interest in the three insurance companies.

18. I remember on one occasion at Mr. Hamby's office in Dallas, Texas, I showed Mr. Hamby some financial statements which he indicated he wanted to see in connection with the negotiations for acquisition of the three insurance companies, and at this time that Charles Moore was his financial representative and company manipulator. There were several occasions when Mr. Hamby indicated to me and to other persons in my presence that Charles Moore was acting on behalf of Mr. Hamby as his representative and agent. We were told on many occasions that when we had to have Mr. Hamby's approval, we had to to through Mr. Charles Moore and obtain his approval first.

19. If the Court grants a new trial or opens up the present trial for more testimony, pursuant to the request of Dr. Robert I. Sarbacher, I will come to Washington, D. C. to testify to the facts and statements hereinbefore set forth in my affidavit and will testify as to other supplementary

facts relating to the facts hereinbefore set forth in my affidavit.

20. The foregoing facts are within my own personal knowledge, and if called on to testify, I could testify competently thereto.

Dated: March 25, 1970.

Ruth J. McGwier
RUTH J. McGWIER

STATE OF ~~TEXAS~~ ARIZONA :
: ss.
COUNTY OF ~~TARRANT~~ PIMA :

On MARCH 25, 1970 before me, the undersigned, a Notary Public in and for said State, personally appeared RUTH J. McGWIER, known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same.

WITNESS my hand and official seal.

Signature Charles M. Tilden

[Caption Omitted in Printing]
C.A. No. 3200-65

AFFIDAVIT OF ROY TRUE

STATE OF TEXAS :
: ss.
COUNTY OF DALLAS:

I, ROY TRUE, being duly sworn, depose and say:

1. I am an attorney at law duly admitted to practice before all the Courts of the State of Texas.

2. I have been an attorney at law for approximately seven years.

3. I have been representing Dr. Robert I. Sarbacher in connection with a lawsuit lodged in the District Court of Dallas County, Texas, 101st Judicial District, entitled Robert I. Sarbacher v. C. A. Hamby and Hamby Industries, Inc., case #65-8719-E.

4. This lawsuit concerned an action by Robert I. Sarbacher for specific performance of contract dated August 14, 1965 by and between Robert I. Sarbacher and C. A. Hamby. It is the contention of Robert I. Sarbacher in this lawsuit that Charles A. Hamby agreed to exercise his option to acquire the remaining fifty percent (50%) interest of Robert I. Sarbacher in certain life insurance companies known as United Federal Life Insurance Company, a Texas Corporation, United Life Insurance Company, a Texas Corporation, Southwest Union Life Insurance Company, a Texas Corporation, and Home Fidelity Life Insurance Company, a Missouri Corporation. The specific performance action further prays that the Court order the defendant, Charles Hamby, to return to Robert I.

Sarbacher the collateral consisting of a deed of trust on the residence of Dr. Sarbacher in Washington, D. C. which was given as collateral security for a promissory note in the principal sum of Four Hundred Fifty Thousand Dollars ($450,000). In connection with the original acquisition by Dr. Sarbacher of the above described life insurance companies.

5. During the period of said litigation, I had an occasion to meet with Mr. Charles Moore, who was the person who specifically told me that he was an agent and representative of Mr. Charles Hamby in connection with the negotiations for an acquisition of the above described life insurance companies by Charles Hamby. During one of these conversations which took place in my office located at the Mercantile National Bank Building, Dallas, Texas, to the best of my recollection the only two persons present was Mr. Charles Moore and myself. During this conversation, Mr. Charles Moore stated to me that in the course of the transaction he was directed to draft a purchase agreement on behalf of C. A. Hamby and that he did draft such agreement which was executed by C. A. Hamby and Robert I. Sarbacher. He further represented to me that under the terms of such agreement, Sarbacher sold to Hamby fifty percent (50%) of his interest in the said insurance companies referrdd to above and further granted Hamby an option to purchase the additional fifty percent (50%) of Sarbacher's interest upon certain conditions and consideration to be performed and delivered. Mr. Moore further represented that subsequent to the execution of that agreement he was advised

by Charles A. Hamby that he was in fact exercising his option to purchase and take title to the additional fifty percent (50%) interest under the terms of said agreement and that the consideration to Sarbacher was to be the delivery of a release of lien and any other claim or encumbrances against said properties which had heretofore been pledged as collateral on loans to Sarbacher and third parties by Thrift Credit Corporation. In that regard, Mr. Moore represented that C. A. Hamby had purchased the note payable to Thrift Credit Corporation from Thrift Credit Corporation and in said purchase had received assignment of rights to the collateral held by Thrift Credit Corporation which was owned by Robert I. Sarbacher. Mr. Moore represented that although he was charged with the responsibility of preparing such releases or causing such releases to be prepared in favor of Robert I. Sarbacher that due to business reasons certain delays occurred and that although drafts of such agreements were prepared for C. A. Hamby's signature, such instruments were never executed to the best knowledge of Mr. Moore. Mr. Moore represented that C. A. Hamby claimed ownership rights to One Hundred percent (100%) of the stock owned by Robert I. Sarbacher in the aforementioned insurance companies, but to his knowledge Hamby failed and refused to deliver to Sarbacher the consideration expressed in the agreement between the parties and to that date has never delivered such consideration.

6. If the Court grants a new trial or opens the trial for additional evidence, I will make the trip to

Washington, D. C. to testify to the foregoing facts.

7. If called upon as a witness to testify to the foregoing facts, the foregoing facts are within my personal knowledge and I can testify competently thereto.

Dated: March 24, 1970.

ROY TRUE

STATE OF TEXAS :
: ss.
COUNTY OF DALLAS:

On Roy True before me, the undersigned, a Notary Public in and for said State, personally appeared ROY TRUE known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

Signature

[Caption Omitted in Printing]
C.A. NO. 3200-65
AFFIDAVIT OF DR. ROBERT I. SARBACHER

STATE OF CALIFORNIA :
: ss.
COUNTY OF LOS ANGELES:

I, DR. ROBERT I. SARBACHER, being duly sworn, depose and say:

1. I am the Plaintiff in the above-entitled action.

2. On or about August 14, 1965, I and Mr. C. A. Hamby

entered into an agreement whereby and wherein C. A. Hamby obtained a 50% interest that I owned in four life insurance companies which were: United Federal Life Insurance Company, a Texas corporation; United Life Insurance Company, a Texas corporation, Southwest Union Life Insurance Company, a Texas corporation and Home Fidelity Life Insurance Company, a Missouri corporation.

3. Said agreement further provided that I did thereby grant and assign to C. A. Hamby an option to acquire my remaining 50% interest in said life insurance companies and that in the event he exercised such option, the consideration would be the return to me of the collateral which I pledged to Thrift Credit Corporation which collateral included my home located in Washington, D. C.

4. On or about the middle of August, 1965, I attended a meeting at the office of C. A. Hamby which was located on Harry Hines Boulevard in Dallas, Texas. At this meeting there was present C. A. Hamby, Mr. Carl Dungan, Milton Kaufman, the then Vice-President of Thrift Credit Corporation, Mr. Paul Verhallen, Mr. Charles Moore, Mr. James Straus and myself. It was at this meeting that Mr. Hamby stated to Milton Kaufman that he was acquiring complete ownership in all of said life insurance companies and at that time C. A. Hamby paid to Mr. Kaufman the sum of approximately $300,000. Furthermore, at this conversation Mr. Hamby stated to me that he was taking over all of my entire interest in the life insurance companies, including the remaining 50% interest in the companies which I had retained pursuant to the agreement of August 14, 1965 which is hereinbefore described. Mr. C. A. Hamby further stated that he was now releasing my home in Washington, D. C. from the

collateral which I had given when I purchased my interest in the life insurance companies, together with certain other collateral which I also pledged in connection with the purchase of my interest in the life insurance companies. At this meeting Charles Moore was instructed by C. A. Hamby to prepare all the papers to evidence C. A. Hamby's acquisition of my entire interest in the life insurance companies and the return to me of the collateral, including my home located in Washington, D. C.

5. On August 27, 1965, I caused to be prepared a document entitled "Memorandum" and dated August 27, 1965. It was my intention to obtain C. A. Hamby's signature on this document to evidence the fact that he had acquired my entire interest in the life insurance companies and had released my home in Washington, D. C. from the collateral.

6. Near the end of August or September, 1965, a Board of Directors meeting was held at the offices of the life insurance companies with regard to the making of a loan to Mr. Art Clifton. Present at that meeting was C. A. Hamby, Carl Dungan, Charles Moore Paul Hamby, Ruth McGwier, Jim Straus, an attorney whose name I do not recall, and myself.

7. At this meeting C. A. Hamby requested that I sign a check authorizing a loan to Art Clifton in the approximate sum of $140,000. I stated to Mr. Hamby at that time that before I could sign any such check or authorize any such loan Mr. Hamby would have to sign a document that I had prepared which showed that he had acquired all of my interest in the life insurance companies and was releasing my home and other collateral which I had given upon the purchase of my interest in the life insurance companies. I then

presented to Mr. Hamby the document which I had prepared entitl "Memorandum" dated August 27, 1965, and requested he sign the sa Mr. C. A. Hamby thereupon agreed to sign such Memorandum and at time did, in fact, sign the Memorandum. I also then signed the Memorandum. A true copy of this document is attached hereto marked Exhibit "A", and the contents whereof are hereby incorpor herein by this reference.

8. After the Memorandum was signed, I then signed the for the loan to Mr. Art Clifton. By this document which is atta hereto marked Exhibit "A", C. A. Hamby confirmed the fact that h had exercised his option set forth in the agreement of August 14 1965, and released me from the Thrift Credit note. By this agre ment, he also agreed that Charles Moore would prepare mutual releases.

9. Prior to the trial, I had made reasonable efforts to located this Memorandum, but in spite of such efforts, I could no locate the same. On March 25, 1970, while going through a file on an invention that I was working on, I accidentally discovered document. I immediately brought it over to Morton C. Devor, my attorney in Los Angeles, California, who is assisting me in conne with this Motion for New Trial.

10. Ruth McGwier, Carl Dungan, Jim Straus, Roy True, th document attached hereto as Exhibit "A", all confirm that the fact is very clear that C. A. Hamby did in fact exercise the option to acquire my remaining 50% interest in the life insurance companies and did in fact release my home in Washington, D. C. from the collateral. I hope and pray that the Court will either grant me a new trial or reopen the prior trial for additional

evidence to permit me to present the truth to the Court and to prevent a gross injustice.

11. If the Court grants a new trial or opens the case for additional evidence, I will be willing to travel to Washington, D. C. totestify to the foregoing facts.

12. The foregoing facts are within my own personal knowledge, and if called upon as a witness, I can and will testify competently thereto.

Dated: March 27, 1970.

ROBERT I. SARBACHER

[Subscription Omitted in Printing]

EXHIBIT "A"

MEMORANDUM

TO: C. A. HAMBY

FROM: R. I. SARBACHER

SUBJECT: Exercise of option per a recpt of August 14, 1965.

1. This is to confirm our conversation that you have exercised your option set forth in subject agreement and released me from the Thrift Credit note.

2. Moore will prepare mutual releases and arrange en employment contract re your research and development division.

3. Please indicate your approval of the above by signing below.

/s/
ROBERT I. SARBACHER

APPROVED:

/s/
C. A. HAMBY

[Caption Omitted in Printing]

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN That ROBERT I. SARBACHER appeals to the United States Court of Appeals for the District of Columbia Circuit from a judgment of this Court entered on the 23rd day of March, 1970 in favor of the Defendants and against the Plaintiff; and

The said Robert I. Sarbacher also appeals from the denial of his motion to set aside the Findings of Fact and Conclusions of Law, and from the refusal to grant the motion for a new trial.

Mark P. Friedlander

FRIEDLANDER, FRIEDLANDER & BROOKS
920 Woodward Building
733 - 15th Street, N. W.
Washington, D. C. 20005

Attorneys to be served:

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Washington, D. C. 20006
Attorneys for Hamby Industries, Inc.

DEXTER M. KOHN, 1730 Rhode Island Ave., N.W.
and Washington, D. C. 20036
COLEMAN L. DIAMOND
1730 "M" Street, N. W.
Trustees Washington, D. C. 20036

3

P R O C E E D I N G S

* * *

DR. ROBERT I.SARBACHER

took the stand, and being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FRIEDLANDER:

Q Would you state your full name, Dr. Sarbacher?

A Robert I. Sarbacher.

* * *

4

Q Well now, what was your field of occupation or f..e d you engaged in in 1965, the beginning of the year?

A Scientific research and development.

* * *

Q Did there come a time when you met a Mr. Brine, B-r-i-n-e, and a Mr. Ryan?

A Yes.

Q And a man named Gilliland, is it?

A Yes.

Q And as a result of what they said to you and what you were told, did you enter into an agreement on the 26th of January, 1965 --I show you a photocopy of it * * *

* * *

5

(Plaintiff's Exhibit One marked and admitted in evidence.)

* * *

[Caption Omitted in Printing]

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Washington, D. C. 20036
and
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1730 "M" Street, N. W.
Washington, D. C. 20036
Trustees

3 P R O C E E D I N G S

* * *

DR. ROBERT I.SARBACHER

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DIRECT EXAMINATION

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* * *

4 Q Well now, what was your field of occupation or field you engaged in in 1965, the beginning of the year?

A Scientific research and development.

* * *

* * *

Q Did there come a time when you met a Mr. Brine, B-r-i-n-e, and a Mr. Ryan?

A Yes.

Q And a man named Gilliland, is it?

A Yes.

Q And as a result of what they said to you and what you were told, did you enter into an agreement on the 26th of January, 1965 --I show you a photocopy of it * * *

* * *

5 (Plaintiff's Exhibit One marked and admitted in evidence.)

* * *

6 (Plaintiff's Exhibit Two marked and admitted in evidence.)

* * *

7 MR. FRIEDLANDER: Thank you. May we offer this as No. Three?

MR. LASKEY: No objections.

THE COURT: Admitted.

(Plaintiff's Exhibit Three marked and admitted in evidence.)

BY MR. FRIEDLANDER:

Q Doctor, can you briefly tell us the circumstances surround the execution by you on January 26, of the promissory note, I'll hand you a photocopy of Plaintiff's Exhibit One -- of Two (handing Witness photocopy)?

MR. LASKEY: We wish to make our objection of Record on the basis that any deficiency in the execution of the note is not available in the hand against the claim of one claiming in the shoes of a holder in due course.

* * *

BY MR. FRIEDLANDER:

Q Do you understand, you remember? How did it come about that you signed that note that bears your signature?

A Yes. Well, I signed this note with the assurance of the Thrift Credit Corporation people that they would be sure that there was no loss to me as a result of my signing it.

Q Now what was the reason? Why did they want it?

A Well, it appears that they wanted to get these insurance companies operating and in order to do it, they wanted to obtain people that would be acceptable to the Commissioner of Insurance.

THE COURT: What was the whole purpose, I mean, you were in this thing for some reason and you all were trying to do something? Why were you in it and what were you trying to do?

WITNESS: I was told that if I would put up the ten thousand dollars, it would be returned to me within ninety days and in addition, I would obtain a continuing interest in the insurance companies; that Mr. Ryan, who was buying, had all of his property tied up in a divorce settlement and it would be released within that ninety days at which time the money would be returned and a continuing interest would result in my favor.

THE COURT: Well, you were going to put up ten thousand dollars and what interest were you going to get?

WITNESS: Well, the interest was not specifically spelled out, but he indicated that I would get as much as a third of his interest. He explained that he would lose the deal otherwise and therefore he was willing to make this sacrifice for the use of the money.

* * *

BY MR. FRIEDLANDER:

Q Now how many other people were in the deal?

A Well, there were a whole lot of others that were involved.

Q You didn't know exactly all the people in it?

A No.

Q Did you know what insurance companies there were?

A No, I did not, sir.

Q Did you know where they were located?

A Well, I knew that they were in Texas, or at least that was the impression they gave.

THE COURT: Didn't you have a lawyer?

WITNESS: Yes, sir. Well, Mr. ah . . . I forget his name at the moment, but he's a very prominent attorney in St. Louis, was representing Ryan and he said he would look after my interest.

* * *

Q Did there come a time when as a result of inactivity on the part of Ryan, that is, financially, and the others, that you were faced with a problem and discussed it with Mr. Hamby?

A Yes.

* * *

Q How did you happen to execute a mortgage, you had already given the note in January?

A Well, Mr. Kaufman of the banking house said, . . .

* * *

A . . . said that if I did this, it would make it easier for him to get someone to replace Ryan, but in any event that he would protect me and see that I lost nothing by doing this.

Q So you executed the mortgage?

A Yes, sir.

* * *

MR. LASKEY: Before we get into it with Mr. Hamby, may I be considered, I have a running objection to the hearsay testimony to the attempt to alter a written instrument by parol evidence, the understanding being that this evidence is coming in for the assistance of the Court in getting the background of this lawsuit, . . .

* * *

MR. LASKEY: . . . and I don't want to keep popping up to interrupt the Witness on these bases. May I be understood to have that running objection on that type of testimony?

THE COURT: Well, I'm not quite clear in my mind what Mr. Friedlander is getting ready to offer, but if your objection is germane to what he's going to offer, then we'll consider it made.

* * *

BY MR. FRIEDLANDER:

Q Now, did there come a time when you talked to a Mr. Hamby?

A Yes, sir.

* * *

Q And where did you meet him?

A At his office.

Q And where at?

A At the -- I think it would be the building -- at the Industries Building.

Q I mean what City?

A In Dallas.

* * *

12 Q And at that time what was the purpose of your meeting? Did you understand why you were meeting him?

A Yes, he had had some of his people investigating the possibility of his taking over the insurance companies.

Q And you're now talking about the same companies that you had been interested in in the New York deal?

A That's right.

* * *

13 (Plaintiff's Exhibit Four marked and admitted in evidence.)

BY MR. FRIEDLANDER:

Now looking at that contract (handing Witness Exhibit Four), do you recall who prepared it?

A (Examining Plaintiff's Exhibit Four) Yes, it was prepared by Mr. Hamby.

Q Now what did you have with you to indicate what interest you had, if any, in these insurance companies?

A Nothing, his people had that material; they had previously gotten all the data on the companies.

Q Did you sign some papers that day besides this contract?

A Not to my knowledge; I think this is the only one.

Q Well now after you signed the contract, what happened in relation to the option in the contract?

A Well, he said that he would exercise the option just as soon as he could make the agreement with the Thrift Credit people and get the approval of the holder of the mortgage.

Q And did there come a time when he advised you that he had done this?

A Yes.

Q And did he at that time tell you whether or not he was exercising any option?

A He told me that he was exercising the option.

Q Now did you ever have a meeting with Mr. Hamby and Mr. Kaufman of the Thrift Company?

A Yes.

* * *

Q Now who was C. A. Hamby?

A He was president of Hamby Industries and the boss of the company.

* * *

Q Now did there come a time at the meeting with Mr. Kaufman, Hamby, Hamby's brother and yourself where anything was said about the collateral, the note?

A Yes.

Q Tell the Court, tell the Court what happened?

A Mr. Kaufman specifically said that he would not sell the companies to Hamby except under the condition that my property would be returned.

Q And when he said you property, was he referring...?

A My collateral that I had put up with the Thrift Credit Corporation.

Q And in the presence of Mr. Kaufman, and yourself, and Hamby's brother, what did C. A. Hamby say to you, or to Kaufman in relation to that?

A He said that he intended to and would return my property.

Q Now did there come a time when you learned from Hamby that he had obtained the collateral note from Thrift?

A Yes, sir.

* * *

16 A Well, Paul Hamby took me to the Texas Bank in downtown Dallas where he picked-up certain funds, time deposits that were held there, in the amount of approximately six hundred thousand dollars.

Q Now whose funds were these?

A These belonged to the insurance companies and he took them to the Irving Trust Company, in Irving, Texas, with me and he opened an account there, and they issued him a check for two hundred and ninety-five thousand dollars to pay the Hamby's. He showed me the check.

* * *

Q Do you know of your own knowledge that this fund was the one used to pay Kaufman?

A Yes, that's what he said. Paul Hamby said, "Well, this closes the deal; this is the Kaufman money."

Q Now did you attempt to get back your note, your collateral from Hamby after this?

A I did, indeed.

* * *

MR. FRIEDLANDER: I have in my hand, I will offer it; it was marked at pretrial. It's the unsigned affidavit of Hamby quoting what Hamby had said. We don't know where the original is at all.

MR. LASKEY: I object.

THE COURT: Under what principle would such a thing be admissible, I'd be interested to hear?

MR. FRIEDLANDER: I'm afraid it wouldn't be, unless Counsel is willing to let it in.

THE COURT: Well, I must then sustain the objection.

* * *

CROSS EXAMINATION

BY MR. LASKEY:

Q During the course of your adult career, you've had occasion to deal with property, have you not?

A Yes.

Q And you've had business properties, residence properties, and investment properties, isn't that correct?

A Yes.

Q And you have in the course of that signed promissory notes and negotiable instruments?

20 A Yes.

Q Mortgages and deeds of trust?

A Yes.

* * *

Q Showing you Plaintiff's Exhibit No. Two, I'll ask you if that is your signature?

A (Examining Exhibit Two) Yes, it is.

Q And you were fully aware, and oriented, and conscious at the time you signed it?

A Yes.

* * *

Q You knew it was a promissory note in the amount of four hundred and fifty thousand dollars, isn't that correct?

A That's correct.

Q And your inducement for signing it was in order to get an interest in a certain speculative venture, was it not?

* * *

21 A Yes, but it was also -- my inducement was also the Kaufman statement that I would lose nothing by signing it;

* * *

Q They needed your assistance in getting the insurance companies qualified by the Insurance Company Commissioner, is that correct?

A That is correct.

Q And they couldn't do it through Ryan because they knew Ryan had been convicted through a tax fraud, as you also knew, isn't that correct?

A No, that didn't come out until some time later.

* * *

22 Q And then following that, after you knew that Mr. Ryan was not acceptable and had been involved in a tax fraud, following that, you then executed the mortgage further securing this note, is that correct?

A Yes, the Kaufman's asked me if I would do that; it would be easier for them to find a replacement for Ryan.

Q You were oriented and in possession of your full faculties at the time?

A Yes, I was, but every instrument I've ever signed for any banker in connection with any property transactions was never a problem; it was exactly what they said. Bankers, to me, are the law as far as money is concerned.

Q Showing you Plaintiff's Exhibit No. Three which is dated the 13th day of March, 19 hundred and 65, you executed this document before a notary Public, isn't that correct?

A That's correct.

23 Q And then you acknowledged it to be your act and deed, isn't that correct?

A That's correct.

* * *

Q Now you have testified, I believe, Mr. Sarbacher, hat you were not in the financial position to enter into the type of agreement you did as of January 26, 1965, is that correct?

A That is correct.

Q Did your condition change in any way between -- from January 19 hundred and 65 to April 19 hundred and 65?

A No, sir.

Q Did you as of April 19 hundred and 65 prepare a financial statement?

A No.

* * *

Q I show you what has been marked as Defendant's Exhibit One, headed, "Financial Statement, Dr. Robert I. Sarbacher", and ask you if you recognize that document?

A (Examining Defendant's Exhibit One) Yes, sir, I do.

* * *

Q . . . showing a net worth of one million, eight thousand dollars, is that correct . . . ?

A Umh, umh.

* * *

Q . . . Included in this Defendant's Exhibit One for identification what is the -- I'll stand over here and let you look at this -- property which we have referred to as the Tracy Place property in Northwest Washington, is that correct?

A Yes.

Q . . . And that's the property here involved, is it not?

A Yes.

Q And the title of that property is in your name?

* * *

A Yes, I think so, yes.

* * *

Q And the value a hundred and fifty thousand dollars? Right?

A Umh, umh, . . .

* * *

28 Q And the annual rental received from the property is listed at twelve thousand dollars, is that correct?

A Well, that was the amount that they said that the rent was.

Q Now referring to Plaintiff's Exhibit Four, is the agreement of August 14, this was an agreement between you and Mr. Hamby, is that correct?

29 A Yes.

Q And at that time, you did have an equity position in the insurance companies, is that correct?

A Yes.

Q And you considered your equity position to be in jeopardy?

A Umh, umh.

Q And you wanted Mr. Hamby's help in securing your equity position, is that right?

A I wanted to divest myself of any interest in this thing. The Hamby people said that if it were drawn up this way, it would be better for them to negotiate with the Kaufman's. So they drew it up this way (indicating Plaintiff's Exhibit Four).

Q Now you did by this agreement give C. A. Hamby, individually, the sole authority to the management of your equity position, is that correct?

A Umh, umh.

Q And you did agree to obtain releases from each of your co-purchasers designated in the contract of January 26, 1965; is that correct?

A Yes, that's what he said, that . . .

Q Well, that's what the agreement said?

A I told him that I -- he couldn't -- I didn't know how he could obtain such releases; he said,"that doesn't matter, just sign it."

Q You not only signed it, you swore to it, didn't you?

A Umh, umh.

* * *

Q Did you ever obtain a release?

A No, he obtained them.

Q How do you know?

A Because he told me so.

Q Did you ever . . .

A And I talked to some of them later and they said they had given him releases.

Q Now it's also provided in subparagraph, Arabic four: "Dr. Robert I. Sarbacher does hereby grant and assign. . . excuse me, I was reading from the wrong place, strike that, please, and I'll start over again, reading subparagraph, Arabic four: "Dr. Robert I. Sarbacher agrees to secure the resignation of all board members and officers of each of the four insurance

31 companies and to replace them with designates of C. A. Hamby."
Did you ever do that?

A. Yes; that was done.

Q By you?

A Well, the releases were -- the resignations were already in Mr. Clinton's hands in Chicago and Hamby picked them up.

* * *

Q You mean, it had already been done before the execution of this agreement?

A Well, it was done when the people took their positions in the company; they signed resignations. This, I was told, was the policy and that they would use them when they needed them.

Q But inspite of that, you permitted this formal agreement on your part to be included in this document we've just been discussing, Plaintiffs No. Four?

A Well, it was -- he was in Chicago and he just picked them up, if you chose, for me.

* * *

32 Q -- Going back to Defendant's Exhibit No. One for identification, I direct your attention to page three of that document which is in all, three pages with two -- three schedules, running schedules, A through I, referring to various parts of the three-page financial statement of Dr. Robert I. Sarbacher as of April 1, 1965, on page three, is that your signature?

* * *

Q Well, is it, or isn't it?

A It looks like it.

Q Do you admit it?

A I don't remember signing it, but I remember seeing it.

* * *

Q There is one there, is there not?

A Yes, there is one there.

* * *

34 "Q State your name?" "A John Mark [spelling it]." "Q And Mr. Mark, where do you reside?" "A 999 - Eighth Street, Boulder, Colorado." "Q And what is your occupation, sir?" "A I am president of Business Research Company, Incorporated."

* * *

35 MR. FRIEDLANDER: Line 16 of page 22: "Q Did Mr. Hamby, when he was talking about his ownership of these companies, did he tell you that, did he make any mention of any ownership of Dr. Sarbacher in these companies?" "A Oh, no." "Q Did he ever mention Dr. Sarbacher?" "A As I recall, I asked how Bobby was, when we went for breakfast and Mr. Hamby said, 'He's fine; he's getting all straightened out; he's going to get his property back, and we're going to have these companies on a good solid business foundation,' or words to this effect. This is not verbatim; this is approximately what was said."

MR. LASKEY: I would object on the ground of hearsay; it's not competent nor relevant.

* * *

MR. FRIEDLANDER: And page 55, on the Redirect Examination: "Q I've just got one or two more questions. Mr. Mark, did

Mr. C. A. Hamby ever have conversation with you at any time,
36 after you first met him, wherein he indicated to you that he intended to return the certain collateral to Mr. Robert I. Sarbacher?" "A Oh yes."

MR. LASKEY: Same objection.

* * *

MR. FRIEDLANDER: And then on page 56, at the top of the page: "Q Could you relate to me, to your best memory, that conversation, what he said to you?" "A The first time, I think I kiddingly said to him there had been some conversation about this. I said, 'How soon are you going to give Bobby back his property?' He said, 'We've been so busy that we haven't gotten up to it, but any time he comes over to the office, we'll see that he gets it back.' Then there was some little time elapsed that we had a telephone conversation from Boulder to Dallas and I mentioned this again. He said, 'Well, why don't you just tell Bobby to come on over here and we'll get it straightened out.' And this was either -- I want to be specific -- this was C. A.'s brother." "Q Paul Hamby?" "A Paul Hamby, because we had several conversations on the phone."

* * *

THE COURT: You object, Mr. Laskey?

MR. LASKEY: Yes, your Honor, I do.

* * *

MR. FRIEDLANDER: That's the Plaintiff's case, if the Court please.

37 MR. LASKEY: If the Court please, in the interest of time and on the basis of the Record, I ask at this time for a

trial finding against the Plaintiff's complaint and in favor of the Defendant on its counterclaim.

THE COURT: Well, of course, we have no evidence at all on the counterclaim, Mr. Laskey.

MR. LASKEY: Very well. Again, in the interest of time, however, I think it would save considerable time if we were not compelled to offer evidence on the Plaintiff's case which he has not made out.

(Both Counsel, Mr. Laskey and Mr. Friedlander argued to the Court.)

THE COURT: I'll deny the motion for the time-being and see what we get from the other side.

MR. LASKEY: Well, I'll offer in evidence what has been marked for identification as Defendant's Exhibit No. One.

* * *

(Defendant's Exhibit No. One admitted in evidence.)

* * *

38 (Whereupon, Dr. Sarbacher resumes witness stand.)

DIRECT EXAMINATION

BY MR. LASKEY:

Q Mr. Sarbacher, are you at this time connected with General Scientific Laboratories, Inc?

A No, sir.

Q You were at one time were at one time, were you not?

A Yes, I was.

Q And as a matter of fact, during September 16,

19 hundred and '67, you were president, treasurer, and director of that corporation, were you not?

A That is correct.

Q And the holder of 973,500 shares of its stock?

A That's correct.

Q And you held that office at a time when

39 General Scientific Laboratories, Inc., put out a prospectus for the public offering of 500 shares of the common stock of that company at the offering price of two dollars per share, were you not?

A That's correct.

Q With a total offering price to the public for the State of Nevada in the amount of $1 million dollars?

A Yes, sir.

THE COURT: You said 500 shares, you must have meant five hundred thousand.

MR. LASKEY: Five hundred thousand, yes, sir.

* * *

Q Showing you what's been marked for identification as Defendant's Exhibit Two, you are familiar with that prospectus?

A (Examining Exhibit Two) Yes, sir.

Q And you are the Dr. Sarbacher referred to in there as president, treasurer, and director?

A That's correct.

* * *

40 (Defendant's Exhibit Two admitted in evidence.)

* * *

Q Reading from page five: "Dr. Robert I. Sarbacher"

41 "Dr. Sarbacher held his first important position as assistant to the renowned Dr. Chaffee, head of Harvard Engineering and Applied Physics Department.

"Prior to his academic work at Harvard, Dr. Sarbacher's educational training was secured at Princeton where he studies under Dr. Einstein and in other universities in the East. He taught at Harvard, the Illinois Institute of Technology, and Radcliffe and became dean of the Graduate School of the Georgia Institute of Technology, where he also served as chairman of the Graduate Council.

"In the industrial world, Dr. Sarbacher has served as president and director of Research and National Scientif Laboratories, Washington, D. C.; Prosperity Companies, Inc., Syracuse, New York; Allied Products Corporation, Miami, Florida; Valder, Inc., Chicago; Gudeman Company, Chicago; Joseph Weidenhoff, Inc., Algona, Iowa; Electrofile Corporation, New York; Briggs Filtration Company, Washington, D. C; and is vice president of Maguire Industries, Inc., New York. He was institutional representative at the Oakridge Institute for Nuclear Studies and a member of the Advisory Council, War Assets Administration. Dr. Sarbacher also served as a professional lecturer, George Washington University, Washington, D. C., and is a member of the Nuclear Energy Committee of the National Manufacturers Association. He has written many books and scientific articles.

"Dr. Sarbacher's 'Encyclopedic Dictionary of Electronics and Nuclear Engineering',into which he has invested more than $90,000 of his own funds for research and manuscript preparation, constitutes a crowning achievement and a fundamental contribution to the scientific world.

"His consulting firm, Robert I. Sarbacher and Associates was located in Washington, D. C. He will be assisted by a staff of qualified engineers, draftmen and technicians, and will have available for consultation a
41 "leading scientist in the United States.

"Dr. Sarbacher's residence address is 3817 Central Park Drive, Las Vegas, Nevada."

Now, were those statements true, Dr. Sarbacher?

A Yes.

* * *

CROSS EXAMINATION

* * *

MR. FRIEDLANDER: We'd like to offer this in evidence. The sole purpose is to show that on the 23rd of August, Hamby Industries claimed a hundred percent of stock ownership of these corporations -- insurance companies.

42 MR. LASKEY: Well, I think this is a little out of order at this time. I'd like to reserve an opportunity to examine it after I have complete my other part of my case.

* * *

Q Doctor, do you now recall since lunchtime whether there was any written memorandum made by Hamby to you in reference to the fact that he had elected to exercise the option?

MR. LASKEY: I object to the Court, this is not the cross-examination; I didn't go into this matter at all.

THE COURT: What are you trying to do, reopen your case?

MR. FRIEDLANDER: The nature of that, yes, sir. We have discovered during the noon recess, I though we'd be

interested in finding out what the facts were.

THE COURT: You mean after five years, you discover in the noon recess that you have a writing that exercises the option?

MR. FRIEDLANDER: No, we have a memorandum; I wanted the Doctor to describe it because I've never seen it."

THE COURT: What?

43 MR. FRIEDLANDER: I've never seen it; I want him to describe it. He says he knows where it is.

* * *

THE COURT: Well, I'll rule on it when you get it and we see it.

MR. FRIEDLANDER: All right, sir. I have no other questions.

* * *

PHILIP I. PALMER, JR.

took the stand, and being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LASKEY:

Q Will you give us your full name, please?

A Philip I. Palmer, Jr.

Q And you are an attorney at law?

Yes, sir.

* * *

44 Q You are the Trustee in Bankruptcy for what organization?

A I am the Trustee in Bankruptcy for Hamby Industries, Incorporated, in a series of other alter ego concerns that were related.

* * *

Q Showing you what has been marked for identification as Three, Four, and Five, I ask you to tell the Court what these constitute in connection with your official capacity?

A (Examining Exhibits) Defendant's Exhibit Three is the order appointing me as Trustee; Defendant's Exhibit Four is the order approving my bond as Trustee; Defendant's Five is the order declaring Universal Credit Cards, Incorporated; Snak-Bar, Incorporated; Western Star Distributing, Incorporated; Star Warehousing, Incorporated; Foodco Finance and Lease, Incorporated; Concentrated Food Corporations; Techomatic Industries, Incorporated; Kuppamatic Distributing Company, Incorporated; World Wide Manufacturing Corporation, and Hamby Industries, Incorporated, each to be alter ego with one or the other.

* * *

45 (Defendant's Exhibits Three, Four, and Five remarked to read 3A, 3B, and 3C and admitted in evidence.)

* * *

Q Handing you Plaintiff's Exhibit No. Two in evidence, I will ask you if you as Trustee came into possession of that document?

A (Examining Plaintiff's Exhibit Two) Yes, sir,

I did.

Q And in what manner?

* * *

WITNESS: This was in the hands of a Washington lawyer to use in this lawsuit as the attorney for Hamby Industries. He was asserting an unpaid attorney's lien; as Trustee of this estate, I paid him his fee and when I did so, he released this note to me and I, in turn, delivered it to Mr. Laskey.

THE COURT: Whom did he represent?

WITNESS: He was the attorney for Hamby Industries before the bankruptcy proceeding began.

* * *

THE COURT: All right. Well, this suit, I take it, was filed before the bankruptcy, wasn't it?

WITNESS: Yes, sir. I inherited this litigation as Trustee in Bankruptcy.

* * *

Q Showing you what's been marked as Defendant's Exhibit Four for identification, I will ask you if you recognize that instrument?

A (Examining Defendant's Exhibit Four) Yes, sir.

Q What is it?

A This is an assignment to me as Trustee in Bankruptcy of Hamby Industries of any claim of C. A. Hamby in various loan agreements, promissory notes, deeds of trust which were being taken into consideration.

* * *

Q Showing you Defendant's Exhibit Five for identification, I will ask you to explain to the Court what

Defendant's Exhibits Four and Five are?

49 A These assignments and quit claims were executed by C. A. Hamby at my request.

* * *

(Defendant's Exhibits Four and Five admitted in evidence.)

BY MR. LASKEY:

Q Now after you assumed your duties as Trustee of these various companies, and had qualified, and given your bond, did you investigate the affairs and assets of these corporations?

50 A Yes, sir, I did.

Q Did you find out the individuals and persons who had been actively participating in their affairs prior to your appointment?

A Yes, sir.

Q And did you come into possession of their books, records, and documents?

A Yes, sir.

Q Now based on that experience, would you give the Court the benefit of what the business operation was and how it was tied together ?

MR. FRIEDLANDER: We're going to object to this, if your Honor please, I don't think the Witness can give a summary of books and records and documents.

THE COURT: Overruled.

WITNESS: At the principal place of business of the Bankrupt in Dallas County, they had two locations, one location, of course, was the office and the second location was the warehouse; the warehouse was a room as large as the Courtroom we're now in and filled.

* * *

51 A There were there machines which held and heated and then distributed hot water, table model in size, and one of the business areas was to place these machines in offices, places of business, and through hot water, simply the hot water, to sell at the same time powdered foods, soups, drinks, beverages, coffee, so you could have a wide variety of limited food. This was Snak-Bar, one of the alter ego corporations; Snak-Bar sold and serviced the powdered food products. The Western Star Warehousing concern did the warehousing of the food. Techomatic and Kuppamatic, which were two more of the corporations, built the machines. Those companies were Georgia companies which had been in existence for a number of years and had been purchased by Hamby and moved to Dallas. World Wide Manufacturing went to Santa Ana, California; it had a factory out there where it produced food-packaging machinery. Universal Credit Cards had an entirely different function and most of the office facilities were taken up with its function. It in essence factored retail merchant accounts receivable. It would sell a merchant a membership in its organization and for a flat fee, it would permit a merchant to make a charge to

any person who had one of a wide number of credit cards, gasoline credit cards, and so forth, and then they would purchase those
52 accounts, ninety cents on a dollar.

Q Did you ascertain whether these companies, or any of them, had been actively engaged in a commercial capacity in the ordinary business world?

A Well, they -- most of them were; they were legitimate business concerns.

Q Were they operating at the time of bankruptcy?

A Yes, sir, they were all operating and the creditors requested in the order appointing me, in fact, I was an operating trustee to preserve this going concern's value and we did sell it as a going concern to an electronics corporation in Pennsylvania, which, sofar as I know, operates it to this day.

Q Now there have been certain insurance companies referred to in the evidence, are you familiar with them?

A Yes, sir.

Q Did you acquire any information in connection with those companies and their operations?

A Yes.

Q Did you acquire any information with respect to Dr. Sarbacher's activities in connection with those companies?

A Yes.

Q What was that?

A I checked with the Texas Insurance Commissioner; he had three of the companies, the other company was a
53 Missouri company and I don't have any knowledge on that one. He had in his possession copies of minutes, copies of the examination report, and in reading these minutes and the examination report, Sarbacher did operate. . .

MR. FRIEDLANDER: Your Honor, we are going to object to this, having a witness testify -- adverse witness testify to conclusions from documents when I've requested them to let me have those records at pretrial and they've never delivered except two minutes which don't show it. I think it's not proper for them to try to characterize somebody's conduct.

THE COURT: Well, do we have the records, or copies of them?

MR. FRIEDLANDER: Do you have the minutes that he's suppose to have looked at, Counsel?

WITNESS: These minutes that I looked at were in the office of the Insurance Commissioner in the State of Texas; these companies were in receivership. I don't have the copies.

MR. LASKEY: If the Court please, I'm following the examples of Mr. Friedlander which your Honor permitted in developing the background in the case in the view of the apparent defense that this Plaintiff and Defendant on the counterclaim was not an active part of these operations; that

he entered into them only in the sense that he was going to get right out. To the extent the Plaintiff has offered such
54 background information, I think I am well within the rights of the Defense at this point in like evidence to contradict that.

THE COURT: All right, you may.

MR. LASKEY: (To Witness) You may proceed.

MR. FRIEDLANDER: May it be subject to my objection?

THE COURT: Yes, it may.

BY MR. LASKEY:Q What was the activity of Dr. Sarbacher?

A He served as president of the companies.

Q Could you ascertain whether this was nominal or active?

A He participated in the board minutes, or the board meetings that I saw; he signed commitment letters, or whatever you call them, where the insurance company agreed to make loans under certain conditions. I would think this is something more than nominal.

* * *

CROSS EXAMINATION

BY MR. FRIEDLANDER:

* * *

55 Q How much did you look at in the record and what period of time?

A I looked through the copies of the minutes that they had for about the year preceding the receivership.

Q When was the receivership?

A The receivership was about thirty days after Mr. Hamby acquired the companies.

* * *

Q When did you look at these records?

A That's been over a year ago.

Q Now when you looked over the records when you first became the Trustee, you first sought to find out what assets Hamby Industries had, did you not?

* * *

A Yes, that's correct.

Q And you found that it had certain cash in banks, did you not?

56 A No, I don't rely on the Bankrupt's records for that; I write the banks direct.

Q Well, did you ascertain there was cash in the bank?

A I don't believe there was any cash in the bank.

Q Did you ascertain whether or not there were any corporate securities owned by Hamby Industries?

A Yes.

Q Now would you tell us what they were?

A It owned stock in Viclad Industries, Incorporated, and that's V-i-c-l-a-d, and in most of these other bankrupt companies, it owned some of the stock.

Q Well now Hamby Industries had, would you say from looking at the records in August of 1965, a hundred shares representing a hundred percent ownership of Universal Credit Cards?

A Yes, I believe that's right.

Q And didn't it also have a hundred percent ownership of United Life Insurance Company consisting of twenty-five hundred shares?

A No, sir, it didn't.

* * *

Q Right here in the Courtroom. Don't you have the records available as to what stock you took over as part
57 of the assets of Hamby Industries, particularly the four insurance companies?

A I didn't take over any stock in the four insurance companies.

Q Didn't Hamby Industries own at the time you took over?

A No, sir.

Q Do you know what had happened to that property?

A Certainly, I investigated that.

Q Well now, I show you a paper marked Plaintiff's Exhibit Five, financial position of Hamby Industries of the 23rd of August 1965 and ask you if that doesn't represent from your examination of the records the Hamby Industries' situation at that date?

A (Examining Exhibit Five) No, sir.

* * *

Q Didn't you ascertain that on the 23rd of August
58 1965, the Hamby Industries were the owners of a hundred percent of the stock of three insurance companies?

A No, sir, I ascertained that they were not.

Q On the 23rd of August 1965?

A Or ever.

Q Now I'm talking about the 23rd of August.

THE COURT: Well if it didn't ever, it didn't on that date.

BY MR. FRIEDLANDER:

Q Well now, are you saying to the Court your investigation disclosed that Hamby Industries never owned a hundred percent of the stock?

A Yes, sir, that's what I'm saying.

Q All right now, tell me what did you look at?

A The stock was issued in the name of Floyd Shelman and Byron Prugh. As nearly as I can ascertain, it was never transferred out of those names; it remained in those names forever. It was. . .

* * *

A May I finish? It was pledged to the Teamsters Fund in Chicago and never left the physical possession of that Teamsters Union and asfar as I know, they hold it today.

* * *

59 Q Excuse me, sir, I think you misunderstood my question. What did the records of Hamby Industries show insofar as the equity position of Hamby Industries and the stock of the insurance companies?

A I don't recall that they showed anything on the insurance companies.

* * *

Q You note on that paper that Hamby Industries has asserted that it has a hundred percent ownership of three of those insurance companies?

A Well, that's what this paper says, yes.

Q Now where are the records of Hamby Industries and where can we see those records?

60 A They are in my possession.

Q Are they here in the Courtroom?

A No, sir.

* * *

Q Did the Hamby Industries' general journal reflect its assets from month to month?

A I don't remember.

Q Well, have you ever looked at the records as of August '65 to see what the general journal reflected as the assets of Hamby Industries?

A Yes.

* * *

61 Q Did you examine the minutes, which you say you examined at the Insurance Office, did you see the resignations of the officers?

A I recall the resignations of Shelman and Prugh; those I do remember.

Q No, I'm talking about Ryan and Gilliland?

A I don't recall them; they may be there, I simply don't recall them there.

Q Well, were Ryan and Brine directors in the minutes

that you looked at?

A I'm sorry, I don't even remember that.

62 Q Well, did you see any minutes of the meeting of August of 1965 of Hamby Industries?

A On the minute book of Hamby Industries?

Q Yes.

A I read the entire minute book; if there was a meeting on that day, I'm sure it's one of the ones I read.

Q Do you have the minute book?

A Yes, sir.

Q Is it here?

A No, sir.

* * *

Q Was there any reason why they weren't brought here?

A Well, these records are all voluminous. I came up . . .

Q How voluminous were the minutes of August '65 of Hamby Industries?

THE COURT: Well, was he asked, was there any demand made under our discovery rules that the minutes be furnished?

MR. LASKEY: Not to my knowledge.

MR. FRIEDLANDER: Your Honor will see further stipulations under the pretrial statement.

63 THE COURT: What does it say?

MR. FRIEDLANDER: "Counsel for the Intervening Defendant agrees he will produce for use at the trial, if available, the following: . . . " I'm just reading from it.

THE COURT: Well now, wait a minute.

MR. LASKEY: The August minutes, my associate advises me, were asked for and were furnished.

MR. FRIEDLANDER: No.

MR. LASKEY: Well now, wait a minute, Mr. Friedlander.

THE COURT: Let's find out about that (perusing the Court's file). You're talking about the minutes of the meeting of August of the insurance companies, how would he have those?

MR. FRIEDLANDER: And the record in the insurance companies' files showing assumption of complete, as contended by Plaintiff to show complete control by Hamby.

THE COURT: This office wouldn't have the insurance companies' file.

MR. FRIEDLANDER: Why, of course, if your Honor please, they took over the insurance companies, Hamby did, why wouldn't they have those records?

THE COURT: I thought the insurance companies had been taken over by receiver.

MR. FRIEDLANDER: A receiver -- I'll get this clear, if I can -- the receiver for the Insurance Commissioner took over

64 in September of 1965 (to Witness) is that what you said?

WITNESS: About thirty days after Hamby Industries bought these notes.

THE COURT: Well, wouldn't he take over all the books and records?

MR. FRIEDLANDER: I wouldn't think so.

THE COURT: What?

MR. FRIEDLANDER: I wouldn't think he'd take over Hamby's books and records.

THE COURT: You didn't say Hamby, you said insurance companies' minutes.

MR. LASKEY: Under the date of February 16, 1970, I wrote Mr. Friedlander that in accordance with discussions at pretrial of this matter, enclosed are copies of the only minutes of the insurance companies for the month of August 1965 which are in our possession.

MR. FRIEDLANDER: And they do not contain any information. I think, if your Honor pleases, in the interest of continuity here that I will continue, if you don't mind.

MR. LASKEY: Surely, I just wanted to respond to the request we did not. . . .

* * *

65 MR. LASKEY: I say, I think I have them here.

THE COURT: You've got copies of them, Mr. Laskey?

MR. LASKEY: The only thing falling within the description of Mr. Friedlander's request, which we had, were minutes

of United Life Insurance Company, Board of Directors Meeting of August 23, 1965, signed by Robert I.Sarbacher as president; Southwest Union Life Insurance Company, unsigned minutes of the meeting of August 23, 1965, Dallas, Texas; United Life Insurance Company, minutes of Directors Meeting of August 23, 1965.

* * *

MR. FRIEDLANDER: I've only got -- they sent single sheets of these two letters. I would say to your Honor, this, I think on the issue, and I'm going to move the Court at this time to allow us time to do three things: (1) to get
66 evidence to prove Plaintiff's Exhibit Five which is the financial statement showing a hundred percent ownership in the life insurance companies; (2) to obtain these records in Texas of the insurance companies' minutes, and also I say to your Honor that I spoke to the attorney, Mr. Roy True, down in Texas at noon time and I represent to the Court that if the Court will give me time, I will produce Mr. True as a witness for the following facts; that Charles Moore, an employee, an officer at that time of Hamby Industries, in response to the claim of a law office for return of these securities, this security note, advised Mr. True that the option had been exercised and that he was going to as soon as possible make available the documents to complete the transaction. Now I spoke to Mr. True on the phone; he told me this. I would also like to make certain that Charles Moore is available to the Court.

Now the Court will say, "You've had plenty of time to prepare this case". . .

THE COURT: You anticipate me perfectly, Mr. Friedlander.

MR. FRIEDLANDER: Yeah, well let me explain to the Court. We are dealing with a very substantial amount. Up to and including, I'd say November, or whatever date that record would show the case was called by the Court, I was definitely under the impression that the case would not be tried in Washington it was being prepared in Texas. On that date,
67 I was required to either put it on the ready calendar, or to dismiss it. So I put it on the ready calendar; * * *

I was told at that time the case would be up pretty quickly; it didn't come up as quickly as was anticipated. I thought that when I made the arrangements at pretrial that these documents would be produced. I say to the Court that I am satisfied that this case needs additional testimony in the form of the bank which received the statement -- financial statement from Hamby Industries because from this document, and I have photostat it, the Court will see a representation of how much of the insurance companies' stock they owned which meant that there had been the exercise of the option otherwise they wouldn't own a hundred percent of the stock, and that's the value of this document. And secondly, we know -- I know from what Mr. Roy True has told me that he was told by Mr. Moore, an employee of Hamby Industries, and the executive

vice president, I understand, that the exercise of the option had taken place. That is the sole issue in the case. We -- and also I am advised now, and was not thought of before, is that there is available in the -- in California an envelope which contains a written memorandum from Mr. Hamby. Now it will be necessary in order to have that memorandum used, to have Hamby either confirm his writing, or have Dr. Sarbacher confirm it, if he can. Now this will prove the exercise of the option which is, in my opinion, the sole question of the case.

68 THE COURT: Mr. Friedlander, this case would have had to have been prepared whether you tried it in Texas or whether you tried it here.

MR. FRIEDLANDER: Not by me, though.

THE COURT: You'd need the same preparation. This case was filed December 22nd, 1965. It laid in the files. Last September, I got to messing with the files and I found out we had an awful lot of old cases that counsel had been dilatory in and had not filed a certificate of readiness. So we had all those old cases set before the various active Judges sitting in civil and yours happen to come before Judge Sirica, but I think we all did the same, we gave you the opportunity to either file a certificate of readiness, or to dismiss the case. You filed a certificate of readiness. The case then -- then you made no motion for further discovery

or anything of the sort. You asked for no/additional discovery of any kind and you came in here to try this case, and we are going to try it and any evidence that you can get between adjourning in the afternoon and starting in the morning, you're welcome to bring in; or if we go over the weekend. any you can get over the weekend, you're welcome to bring in. But I'm not going to continue this case to get any evidence.

MR. FRIEDLANDER: Well, would your Honor allow us tomorrow morning to bring in Mr. Roy True?

THE COURT: Bring in who?

69 MR. FRIEDLANDER: The lawyer from Texas, he can fly in.

THE COURT: What's he going to say?

MR. FRIEDLANDER: That he, acting on behalf of Mr. Sarbacher,was at that time working for a law firm which was representing Dr. Sarbacher, had made demand upon the Hamby Industries for this note and collateral and that in result of his application or demand, Mr. Moore came to his office and told him that the option had been exercised by Hamby and that he would. . .

THE COURT: Mr. who?

MR. FRIEDLANDER: His name is Roy True; he's a lawyer in Texas.

THE COURT: Who came in and said it had been exercised?

MR. FRIEDLANDER: A Mr. Charles Moore.

THE COURT: Who's he?

MR. FRIEDLANDER: He was the executive vice president of Hamby Industries; he's the gentleman that was in that company until a period when he quit. At that time, I think he quit immediately before the Trustee took over.

THE COURT: You've closed your case and I'm not going to permit it to be reopened.

* * *

70 Q Now did you talk to Mr. Hamby?

A Yes, sir.

Q Did you ever see an affidavit that Hamby had made saying that he had exercised the option?

A No, sir.

Q And what were the circumstances in which Hamby gave you the assignment in 1967?

A It was being asserted here that he had some interest in it and therefore, as Trustee in Bankruptcy, I had, maybe, a half interest, maybe no interest in the collateral. He was attempting to clarify the point that he claimed no interest in it personally.

Q Now how did you approach Mr. Hamby?

A Well, he had previously testified personally that he declared that he claimed no interest in it. I just asked him to put it in writing.

Q Well now, where did you see him?

A I met him in those days in my office; we had

71 conferences in his lawyer's office, my lawyer's office down there.

Q You know where he is now?

A Yes, sir.

Q Where?

A Irving, Texas.

Q And what business is he in?

A I don't know that; I don't know what he's doing now.

Q Is it a fact that he did, or did not go to the penitentiary?

A He did go to the penitentiary.

Q How long was he there?

A I think he was there about a year and a half.

Q Do you know the period?

A About a year and a half.

* * *

THE COURT: Is this a state or Federal offense he went in for, do you know?

WITNESS: Mail fraud, U.S.

* * *

[PLAINTIFF'S EXHIBIT 1]

AGREEMENT

This agreement entered into this 26th day of January, 1965, by and between Floyd L. Shelman and Byron E. Krugh, hereinafter referred to as Sellers and James G. Ryan, Robert I. Sarbacher, Paul S. Brine, Jr. and Hudson K. Gilliland, hereinafter referred to as Buyers.

WHEREAS, Sellers are the owners of 93,179 shares of United Federal Life Insurance Company, a Texas corporation, 2500 shares of United Life Insurance Company, a Texas corporation, 221,762 shares of South West Union Life Insurance Company, a Texas corporation, and 65,000 shares of Home Fidelity Life Insurance Company, a Missouri corporation, and

WHEREAS, Sellers are desirous of selling and Purchasers are desirous of purchasing,

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties hereto, the parties agree as follows:

1. Buyers assume and agree to pay the following indebtedness of the Sellers.

(a) a loan from Central States Southeast and Southwest Areas Pension Fund in the principal amount of $1,800,000.00 and all obligations of the Sellers on said loan to day of assumption by Buyers.

(b) a loan from the Capital National Bank of Austin, Texas to Sellers in the principal amount of $150,000.00 and all obligations of Sellers on the date of assumption by Buyers.

(c) a loan from the First National Bank of Dallas, Dallas, Texas to the Sellers in the principal amount of $100,000.00 and all obligations of Sellers on the date of assumption by Buyers.

It is understood by the parties that said loan is secured by a pledge of 15,000 shares of Home Fidelity Life Insurance Company which are included in the number of shares hereinabove set forth as owned by Sellers and that the Buyers shall be entitled upon the payment of said loan to all rights of ownership of the Sellers in said stock.

2. Buyers will execute to the Sellers a promissory note in the amount of $450,000.00 payable together with interest at the rate of 8% per annum as follows: $50,000.00 not later than 14 days from date; $150,000.00 120 days from date; $50,000.00 210 days from date; $2500.00 per month thereafter with the entire balance of principal and interest due and payable two years from date, which shall represent the balance due and owing on the purchase price of said aforementioned shares of stock.

3. As collateral security for payment of aforementioned note the parties agree to the following:

a. Buyer Robert I. Sarbacher shall execute a deed on property known as 2503 Tracy Place Northwest, Washington, D. C., subject to encumbrances of record which will not exceed $46,000.00 to Thrift Credit Corporation, a New York corporation, which Thrift Credit will hold said deed as Trustee for Sellers as security for note until such time as $50,000.00 has been paid on said note, at which time said Trustee shall deed said property back to Robert I. Sarbacher.

b. Buyer Robert I. Sarbacher shall assign to Sellers all monies due said Robert I. Sarbacher from Aven Construction Company arising out of the sale of certain building lots situate in Prince Georges County, Maryland.

In connection herewith the said Robert I. Sarbacher agrees, if necessary, to execute an assignment of any mortgages or contracts entered into with the said Aven Construction Company.

c. Buyer Robert I. Sarbacher agrees within ten days after becoming President of said insurance companies to deliver to Sellers 8200 shares representing all the issued and outstanding shares of Holiday Development Corporation, a Colorado corporation, said shares to be held as collateral security for the payment of the entire balance and interest due and owing on the aforementioned $450,000.00 note.

4. The Buyers further agree to employ Clyde G. Meise, attorney at law, as counsel until such time as $200,000.00 has been paid on said note. All investments and mortgages and loans of any nature whatsoevern on any and all transactions which affect the financial condition of said companies shall not be made without first consulting and obtaining the approval of the said Clyde G. Meise in writing.

The Buyers further agree that the following persons shall be the officers of all the companies herein, being: Robert I. Sarbacher as President, Paul B. Brine, Jr. as Vice President and Hudson K. Gilliland as Secretary and Treasurer.

5. Upon compliance by the Buyers of the foregoing terms and conditions of this sale the Sellers agree as follows:

a. Sellers agree to transfer to the Buyers all of the aforementioned stock with the exception of 15,000 shares of Home Fidelity Life Insurance Company, subject to a pledge heretofore made to Central States Southeast and Southwest Areas Pension Fund. Said 15,000 shares of stock of Home Fidelity Life shall be transferred subject to the pledge made to First National Bank of Dallas hereinabove referred to.

b. Sellers agree to assign to Buyers the surplus note in the amount of $150,000.00 from United Federal Life Insurance Company to Sellers, which note shall be transferred subject to a pledge to the Capital National Bank of Austin, as security for a loan in the amount of $150,000.00.

In the event of default by the Buyers upon any of the terms and conditions set out in this agreement, and upon receipt of written notice from the Sellers, assign to the Sellers all rights, interest and ownership of said shares of stock of the named insurance companies.

The Sellers shall have the following remedies:

a. Sellers shall have the right to public or private sale to sell such stock and at such sale the Sellers shall be entitled to purchase said stock and any money received in payment therefor shall be applied toward the balance due and owing from the Buyers to the Sellers and the Buyers shall remain liable for any deficiency remaining.

b. Sellers may proceed against the Buyers individually, or jointly, for the entire balance due and owing on said note and without first proceeding against or applying any security the sellers may hold. In the event of any judgment taken against the Buyers, Sellers may have the right at their election, to proceed against any security in satisfaction of said judgment.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

Floyd L. Shelman

Byron L. Pruh

Sellers

James G. Ryan

Robert L. Barbacher

Paul B. Brane

Hudson K. Williard

Buyers

[PLAINTIFF'S EXHIBIT 2]

PROMISSORY NOTE

$450,000.00 Kansas City, Missouri January 26, 1965

The undersigned, hereinafter referred to as "Maker", promises to pay to the order of Floyd L. Shelman and Byron E. Prugh, at 15 West Tenth Street, Kansas City, Missouri, the principal sum of $450,000.00 together with interest at the rate of 6% per annum as follows: $50,000.00 not later than 14 days from date; $150,000.00 120 days from date; $50,000.00 210 days from date; $2500.00 per month thereafter with the entire balance of principal and interest due and payable two years from date.

No delay or omission of the Payee or the then holder of this Note to exercise any right, option, or power under this Note shall impair such right, option, or power, or be construed as a waiver of any default hereunder, and any single or partial exercise of any sich right, option or power shall not preclude other or further exercise therof, or the exercise of any other right, and no waiver or consent whatsoever shall be valid unless in writing, signed by the Payee, or the then holder of this Note, and then only to the extent as specficially set forth in said writing.

The terms, covenants and agreements of this Note shall inure to the benefit of the successors and assigns of the Payee.

Should an attorney be employed to procure payment hereof by suit or otherwise, the Maker agrees to pay a reasonable sum as attorneys'

fees therefor. The demand for presentment of payment, notice of nonpayment and protest are waived.

James G. Ryan

Robert I. Sarbacher

Paul B. Brine, Jr.

Hudson K. Gilliland

The makers, Floyd L. Shelman and Byron E. Prugh do hereby guarantee said note over to the order of Thrift Credit Corporation and further guarantee said note in the amount of $300,000.00 only. It is understood that payments received by Thrift Credit Corporation on this note will be applied to a reduction of a $300,000.00 loan made of even date herewith to Parliament House, Inc., et al. The makers further do hereby assign to Thrift Credit Corporation any and all collateral given as security for and of this note and agree to execute any instruments necessary to affect same.

Floyd L. Shelman

Byron E. Prugh

Thrift Credit Corporation without recourse does hereby assign all of its right title and interest in the within note to the order of C. A. Hamby and Hamby Industries, Inc.

THRIFT CREDIT CORPORATION

BY: _____

_____

[PLAINTIFF'S EXHIBIT 3]

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-4237- 398

38538 DEED OF TRUST

Law Reporter Blank No. 503
810 FIFTH ST. N.W., WASHINGTON, D. C.

This Deed

Made this 13 day of February ~~March~~, A. D. 19 65, by and between

Robert I. Sarbacher, unmarried, party of the first part, and Dexter M. Kohn and Coleman L. Diamond, Trustees, parties of the second part, ~~part of the second part:~~

Whereas, the said Robert I. Sarbacher, unmarried,

justly indebted to Thrift Credit Corporation in the full sum of Four Hundred Fifty Thousand and no/100 ($450,000.00) Dollars being money loaned on the hereinafter described property for which amount the said Robert I. Sarbacher has executed and delivered his Promissory Note bearing date the 26th day of January, 1965 and bearing interest thereon at the rate of Six Per Centum (6%) per annum until paid in full.

Said Note being payable in full on May 26, 1967 plus accrued interest. The condition of this obligation being such that if Robert I. Sarbacher shall pay to the said Thrift Credit Corporation, or its assigns, One Hundred Thousand ($100,000.00) Dollars of the indebtedness hereinabove described, then and in that event, the security on the hereinafter described property shall be void, otherwise said security shall remain in full force and effect.

The privilege is reserved of pre-paying each of said Notes in part or in full at any time without penalty.

And Whereas, the party of the first part desires to secure the prompt payment of said debt, and interest thereon, when and as the same shall become due and payable, and all costs and expenses incurred in respect thereto, together with all taxes and insurance premiums as well as all renewals or extensions of said debt, including reasonable counsel fees incurred or paid by the said parties of the second part or substituted trustee, or by any person hereby secured, on account of any litigation at law or in equity which may arise in respect to this trust or the property hereinafter mentioned, and of all money which may be advanced as provided herein, with interest on all such costs and advances from the date thereof.

Now Therefore, This Indenture Witnesseth, that the party of the first part, in consideration of the premises, and of one dollar, lawful money of the United States of America, to him in hand paid by the parties of the second part, the receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, has granted, and does hereby grant unto the parties of the second part

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the following described land and premises, situated in the District of Columbia, known distinguished as

Lot numbered Thirty-one (31) in Daniel C. Roper's subdivision of part of Block numbered Five (5), "Belair Heights", as per plat recorded in Liber 74 at folio 175 in the Office of the Surveyor for the District of Columbia.

Said property being now known for assessment and taxation purposes as Lot numbered Thirty-one (31) in Square numbered Twenty-five Hundred Two (2502).

together with all the improvements in anywise appertaining, and all the estate, right, title, interest and claim, either at law or in equity, or otherwise however, of the party of the first part, of, in, to, or out of the said land and premises.

In and Upon the Trusts, Nevertheless, *hereinafter described; that is to say: IN TRUST to permit said* Robert I. Sarbacher *or assigns, to use and occupy the said described land and premises, and the rents, issues and profits thereof, to take, have, and apply to and for* his ~~their~~ *sole use and benefit, until default be made in the payment of the said note hereby secured or any installment of interest thereon, when and as the same shall become due and payable, or any proper cost, tax, or expense in and about the same as herein provided.*

And, *upon the full payment of all of said note and the interest thereon, and all moneys advanced or expended as herein provided, and all other proper costs, counsel fees, charges, commissions, half-commissions and expenses, at any time before the sale herein provided for to release and reconvey the said described premises unto the said* Robert I. Sarbacher *or assigns, at* his sole ~~their~~ *cost.*

And Upon This Further Trust, *upon any default or failure being made in the payment of* the *note or of any installment of principal or interest thereon, or upon default in payment, on demand, of any sum or sums advanced by the holder or holders of said note on account of any costs, counsel fees and expenses of this Trust, or on account of any such tax or assessment, or insurance or expense of litigation, or on account of any lien, Deed of Trust or Mortgage on said land and premises, prior in lien to this Trust, with interest thereon at six per centum per annum from date of advance (it being hereby agreed that on default in payment of said costs, expenses, tax or assessment, or insurance, or expense of litigation, or such prior lien, Deed of Trust or Mortgage as aforesaid, the same may be paid by the holder or holders of said note and all sums advanced in so doing, with interest as aforesaid, shall forthwith attach as a lien hereunder and be*

demandable at any time); then, upon any and every such default so made as aforesaid, the said part ies of the second part Dexter M. Kohn and Coleman L. Diamond

or the trustee

acting in the execution of this trust shall have the power and it shall be their or his duty thereafter to sell, and in case of any default of any purchaser to resell the said described land and premises at public auction, upon such terms and conditions, in such parcels, at such time

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and place, and after such previous public advertisement as the part ies of the second part

or the trustee acting

in the execution of this trust shall deem advantageous and proper; and to convey the same in fee simple, upon compliance with the terms of sale, to, and at the cost, of the purchaser, or purchasers thereof, who shall not be required to see to the application of the purchase money; and of the proceeds of said sale or sales: FIRSTLY, to pay all proper costs, charges, and expenses, including all counsel fees and costs herein provided for, and all moneys advanced for taxes, insurance, and assessments, with interest thereon as provided herein, and all taxes, general and special, due upon said land and premises at time of sale, and to retain as compensation a commission of 5 per centum on the amount of the said sale or sales; SECONDLY, to pay whatever may then remain unpaid of said note whether the same shall be due or not, and the interest thereon to date of payment, it being agreed that said note shall, upon such sale being made before the maturity of said note , be and become immediately due and payable at the election of the holder thereof; and, LASTLY, to pay the remainder of said proceeds, if any there be, to said Robert I. Sarbacher

or assigns, upon the delivery and surrender to the purchaser, his, her or their heirs or assigns, of possession of the premises so as aforesaid sold and conveyed, less the expense, if any, of obtaining possession.

And, Robert I. Sarbacher do es hereby agree at his own cost, during all the time wherein any part of the matter hereby secured shall be unsettled or unpaid to keep the said improvements insured against loss by fire in the full sum of Fifty Thousand ($50,000.00) dollars, in the name and to the satisfaction of the part ies of the second part, or substituted trustee, in such fire insurance company or companies as the said part ies of the second part may select, who shall apply whatever may be received therefrom (whether by return short rate unearned premiums after foreclosure or otherwise) to the payment of the matter hereby secured, whether due or not, unless the party entitled to receive shall waive the right to have the same so applied; and also to pay all taxes and assessments, both general and special, that may be assessed against, or become due on

said land and premises during the continuance of this trust and that upon any neglect or default to so insure, or to pay taxes and assessments, any party hereby secured may have said improvements insured and pay said taxes and assessments, and the expenses thereof shall be a charge hereby secured and bear interest at the rate of six per centum per annum from the time of such payment.

And, *it is further agreed that if the said property shall be advertised for sale, as herein provided, and not sold, the trustee or trustees acting shall be entitled to one-half the commission above provided, to be computed on the amount of the debt hereby secured.*

And, *the said party of the first part covenant that he will warrant specially the land and premises hereby conveyed, and that he will execute such further assurances of said land as may be requisite or necessary.*

In Witness Whereof, *the said party of the first part has hereunto set his hand and seal on the day and year first hereinbefore written.*

Signed, sealed and delivered in the presence of—

Martin M. Kaplan — Robert I. Sarbacher [SEAL]

_____ [SEAL]

_____ [SEAL]

_____ [SEAL]

_____ [SEAL]

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United States of America

District of Columbia, to wit:

I, Mildred J. Linhart, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY that Robert I. Sarbacher, unmarried party to a certain Deed bearing date on the 13th day of March A. D. 19 65, and hereunto annexed, personally appeared before me, in said District, the said Robert I. Sarbacher being personally well known to me as the person who executed the said Deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this 13 day of March A. D. 19 65

Mildred J. Linhart
Notary Public

Deed of Trust

08538

Robert I. Sarbacher

TO

Dexter M. Kohn

Coleman L. Diamond

TRUSTEES

Received for Record on the _____ day of

_____, A. D. 19__,

at _____ o'clock _____ M., and recorded in

Liber No. 12376 at Folio 398

one of the Land Records for the District of Columbia,

and examined by

Peter S. Ridley

Recorder.

[PLAINTIFF'S EXHIBIT 4]

Exhbit "B"

AGREEMENT

STATE OF TEXAS
COUNTY OF DALLAS

This agreement entered into this 14th day of August, 1965, by and between Dr. Robert I. Sarbacher and C. A. Hamby.

WHEREAS, Dr. Robert I. Sarbacher by virtue of a contract dated the 26th day of January, 1965 by and between Floyd L. Shelman and Byron E. Prugh as Sellers and Dr. Robert I. Sarbacher et el as Buyers has certain equity interests as specified in said contract in the form of 93,179 shares of United Federal Life Insurance Company a Texas Corporation, 2500 shares of United Life Insurance Company, a Texas Corporation, 221,762 shares of South West Union Life Insurance Company, a Texas Corporation, and 65,000 shares of Home Fidility Life Insurance Company, a Missouri Corporation, subject to certain outstanding indebtedness, and,

WHEREAS, Dr. Robert I. Sarbacher's equity position in said companies is in jeporady by virtue of payment default on certain obligations assumed by Dr. Robert I. Sarbacher in the above mentioned contract and,

WHEREAS, C. A. Hamby is willing to attempt to secure Dr. Robert I. Sarbacher's equity position.

NOW, THEREFORE, in consideration of the mutual covenants and promise of the parties hereto, the parties agree as follows:

1. Dr. Robert I. Sarbacher does hereby assign all right title and interest in and right of sole authority and management of his equity position to C. A. Hamby.

2. Dr. Robert I. Sarbacher agrees to obtain releases from each of his co purchaseas designated in the aforementioned contract, said releases to be executed in his favor and to be hereby assigned to C. A. Hamby.

3. C. A. Hamby agrees to use his best efforts and resources to preserve the equity position of Dr. Robert I. Sarbacher.

4. Dr. Robert I. Sarbacher agrees to secure the resignations of all Board members and Officers of each of the four insurance companies and to replace them with designates of C. A. Hamby.

5. Dr. Robert I. Sarbacher does hereby grant and assign a 50% interest in and to his equity position to C. A. Hamby as consideration for his efforts and hereby grants an option for the remaining 50% to be paid as follows.

The return to Dr. Robert I. Sarbacher of his collateral pledged to Thrift Credit Cirporation, a New York Corporation of Binghampton, New York.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

C. A. Hamby

Dr. Robert I. Sarbacher

Subscribed and Sworn to before me this 14th day of August, 1965.

Notary Public, Dallas County, Dallas, Texas

[DEFENDANT'S EXHIBIT 1]

623 Fidelity Union Bank Tower Dallas

FINANCIAL STATEMENT

Dr. Robert I. Sarbacher
2424 Inwood Road, Dallas (home address)
700 Fidelity Union Tower, Dallas (business)

For the purpose of procuring credit from time to time, undersigned hereby submits the following statement of condition of April 1, 1965. The undersigned hereby maintains and guarantees that said statement is in all respects true and correct: you may consider the same as continuing to be true and correct written notice of a change is given to you by the undersigned.

ASSETS

Cash on Hand (See Schedule A)	$9,443.33	
Accounts Receivable (See Schedule B)	26,000.00	
Notes Receivable (See Schedule C)	47,950.00	
Cash Value Life Ins. (See Schedule D)	13,300.00	
Total Current Assets		596,6
Stocks and Bonds (See Schedule E)	2,491,554.00	
Real Estate (See Schedule F)	260,000.00	
Machinery and Fixtures (See Schedule G) $296,100.00 less deprec. of 50%	138,050.00	
Mortgage (First) $50,000 (10 mo.) (See Schedule H)	50,000.00	
Total		2,939,

LIABILITIES

Notes Payable to Banks (Schedule I)	41,500.00	
Accounts Payable	1,500.00	
Total Current Liabilities		43,0
Mortgages on Real Estate (Schedule F)	88,000.00	
10 yr. mortgage on insurance stock	1,500,000.00	
Total Liabilities		1,930,...
Net Worth		1,008,...
Total		2,939,604.00

There are no assets listed above which are exempt by law. Sched E is a list of the above assets pledged as collateral. Schedule are liabilities secured by collateral. I have no liability upon accommodation notes as an endorser or guarantor. The insurance

buildings is listed in Schedule F and on machinery in Schedule [illegible]. I have life insurance in the amount of $135,000.00 payable to my daughter and sister.

LIST OF REAL ESTATE

Dimensions	Location	Value	Mortgage	Due	Annual Rent Rec
10,000	2503 Tracy Pl., NW. Washington, D.C. (Title-R.I.Sarbacher) Lease expires June 30 and house will be sold.	$150,000	$47,000	25 yrs.	$12,000
40,000	7301 Bradley Blvd. Bethesda, Md. (Title-R.I.Sarbacher) House used by brother	$80,000	$25,000	25 yrs.	
10,000	6807 Marie St., Beltsville, Md., (Title-R.Q.White)	31,000	12,271	20 yrs.	2,[illegible]
10,000 ea.	21 lots Beltsville, Md. (Title-R.I.Sarbacher)	136,500	55,000	1 yr.	- C

There are no unpaid taxes on the above and regard the property located at 2503 Tracy Place, Washington, D.C. as my homestead. [illegible] is used for business property purposes.

LIST OF STOCKS AND BONDS PLEDGED AND REGISTERED IN THE NAME OF ROBERT I. SARBACHER

No. of Shares	Name of Issuing Company	Par Value Per Share	Market Per Share	Total Value
65,000	Home Fidelity Life Kansas City, Mo.	$1.00	$3.98	$258,472
221,760	Southwest Union Life Dallas, Texas	1.00	3.30	825,343
2,500	United Life Dallas, Texas	10,00	630.04	815,750
93,178	United Federal Life Dallas, Texas	no par	6.36	591,987

* When street is completed estimated 30 days.

INCOME FOR LAST 12 MONTHS

Salary	$30,000.00 *
Commissions Royalties	6,000.00
Rentals	15,600.00
Dividends (to be determined)	
Other - Consulting Fees (average)	20,000.00 **

There is no federal income tax due and no suits or property settlements pending. I have executed a Will naming Fred Lope, Esq. of 230 Royal Palm Way, Palm Beach, Florida, as Executor.

The undersigned declares and certifies that the above statement and schedules are true and correct accounts of the condition of my business on the day above stated.

Robert I. Sarbacher

Witness:

_____

_____

* anticipated salary as soon as merger sales have been effected

** These have been curtailed due to insurance company operations.

A S S E T S

SCHEDULE A

Cash in Banks

Franklin National Bank	$2,388.66	
McLachlen Barking Corporation	695.59	
Riggs National Bank	2,895.08	
Cash on Hand	864.50	
Savings Account, McLachlen Banking Corp.	2,500.00	

SCHEDULE B

Accounts Receivable

Billingsly, Washington, D.C.	500.00	
General Scientific Corp.	16,000.00 *	
River Road Development Corp.	7,500.00 *	
Royaltics	2,000.00	$26,000.00

SCHEDULE C

Notes Receivable

Gerald Willis	6,950.00	
Gen. Wm. Hall	5,000.00	
E. W. Sarbacher (Washington, D. C.)	38,000.00 *	
		$49,950.00

SCHEDULE D

Cash Value - Life Insurance

Guardian Life (50,000 policy)	$7,500.00 **	
Travelers Life (5,000 policy)	4,200.00 **	
Sun Life (5,000 policy)	1,600.00 **	
Mutual of Omaha (75,000 travel)	.00	$13,300.00

SCHEDULE E

65,000 shares Home Fidelity Life (Missouri)
Representing 100% of outstanding shares
Value at 1-1/3 book - evaluation of insurance
in force $7.50 per $1000, reserves not
included 258,472.50

221,760 shares Southwest Union Life (Texas)
representing 68% of outstanding shares
Value (1½ book) evaluation of insurance
in force at $30.00 per $1000 in force,
reserves included 825,343.20

* Collection doubtful
** Estimated

CHEDULE E continued

500 shares of United Life (Texas) repre-
nts 100% of outstanding shares value at
. book - evaluation of insurance in force
0.00 per $1000.00 $815,750.76

,178 shares of United Federal Life (Texas)
presents 54% of outstanding shares. Value
1½ book - evaluation of insurance in force
.$7.50 per $1000 excluding reserves 591,987.70

Total $2,491,554.16

neficial interest in above now held by contract. Stock is presently
ld by the LaSalle Bank, Chicago as security for a $1,800,000.00 loan.

CHEDULE F

al Estate Owned (in name of R.I. Sarbacher)

503 Tracy Place, N.W., Washington, D.C.
(See Note below) - Market value $150,000.
quired 1960 at a cost plus improvements
f $135,000. Mortgage held by Republic
vings and Loan Corp., Washington, D.C.,
current amount of $27,000 (25 yrs.) 103,000.00

ote: This house is next door to Sec. of
reas., Douglas Dillon and across the street
rom Sec. of Defense, Robert McNamara.

301 Bradley Blvd., Bethesda, Md.
rket value $80,000. Acquired 1955 at a
ost plus improvements of $70,000. Mortgage
eld by Ellis Jones Co., Bethesda, Md., in
ne current amount of approximately $25,000 (25 yrs) 55,000.00
pprox. equity --

307 Marie Street, Beltsville, Md.
arket value $31,000. Acquired 1964 (in
me of attorney, R.Q. White, Washington,
.C.) as straw Mortgage held by Ellis Jones Mortgage Co.
n amount of approximately $16,000 (25 yrs)
pprox. equity -- 15,000.00

* This equity assigned to Thrift Credit Corporation as part payment
on purchase price of insurance companies

SCHEDULE G

Personal property at Present Market Value less 50%		
Furniture	$ 22,500.00	
Paintings and Art	46,300.00	
Antiques & Chandeliers	14,250.00	
Scientific Books Library	25,000.00	
Automobile (depreciated)	2,000.00	
Scientific Instruments & equipment	28,000.00	138,050.

SCHEDULE H

Mortgage

Fourteen (14) lots, Marie Street and Irdigo Dr.

#19 - 23 and # 26 - 34 Acquired in 1964 in name of Robert I. Sarbacher. Sold to Mr. Koier, Pres., Central Bank of Maryland. One year mortgage with either pay-out on construction or balloon. $50,000.00 $50,000

LIABILITIES

SCHEDULE I

90 day, 6% unsecured note for $25,000 with Franklin National Bank, Franklin Square, New York. This note is due May 4, 1965. A $5,000 curtailment is expected by the bank 25,000.00

60 day, 6% unsecured note for $10,000 with Riggs National Bank, Universal Office (Mr. Behabetz) due in entirety May 17, 1965 10,000.00

90 day, 6% secured note for $6,500 with the McLachlen Banking Corporation. This note is renewable automatically with the payment of interest. The security is a first mortgage on property which has not been listed as an asset under real estate (above) 6,500.00

Note: All properties covered by insurance

* This equity assigned to Thrift Credit Corporation as part payment on purchase price of insurance companies.

[DEFENDANT'S EXHIBIT 2]

GENERAL SCIENTIFIC LABORATORIES, INC.
(A Nevada Corporation)
3177 South Highland Drive
Las Vegas, Nevada

500,000 SHARES COMMON STOCK
Offering Price $2.00 per share (or unit)
Par Value $1.00 per share

	Price to Public(1)	Underwriting Discounts and Commissions(2)	Net cash proceeds to the Company(3)
Per Unit or Share	$ 2.00	$ .30	$ 1.70
Total Offering	$1,000,000.00	$150,000.00	$850,000.00

(1) The offering price to the public has been arbitrarily determined. Shares of stock in this offering are to be sold for cash unless otherwise indicated.

(2) The Corporation has agreed to use its best efforts in selling the securities herein offered through three of its incorporators, each of whom is an officer, and there is, therefore, no assurance that any or all of the securities will be sold. They are receiving no underwriting commissions, however, the Corporation is paying underwriter discounts and commissions in connection with the offering in the maximum amount of $.30 per share. In view of their agreement to restrict expenses, the total expenses may be less and the proceeds to the Corporation may be greater than as set forth in the above tabulation. Reference is made to further information herein under "Underwriting Arrangements."

(3) Before deducting expenses of sale which will not exceed $50,000.00. These expenses include advertising, printing, organization expenses, and all other charges, except underwriting commissions, directly applicable to the sale of these securities. Such expenditures will be made in accordance with statutory regulations, and the total of such expenses will not exceed five per cent of the price of shares to be sold or offered for sale.

PRELIMINARY PROOF
PRINTING IN PROCESS

THESE SECURITIES ARE OFFERED IN NEVADA TO BONA FIDE RESIDENTS OF NEVADA ONLY. NEITHER THE SECRETARY OF STATE, AS ADMINISTRATOR OF THE SECURITIES ACT, NOR ANY OFFICER OF THE STATE OF NEVADA HAS PASSED UPON THE MERITS OF THESE SECURITIES OR UPON THE ACCURACY OR COMPLETENESS OF THIS PROSPECTUS.

SPECULATIVE NATURE OF THE OFFERING

The securities offered hereby are regarded as speculative because the company has had no operating history and the value of the shares depend solely upon future developments as outlined in this offering circular.

The Date of This Prospectus is September 16, 1967.

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THE CORPORATION

General Scientific Laboratories, Inc., hereinafter referred to as the "Corporation," was organized under the laws of the State of Nevada on April 10, 1967 for the purposes set forth under the caption "Business." The Corporation's offices and laboratory are located at 3177 South Highland Drive, Las Vegas, Nevada.

PREDECESSOR

The predecessor to General Scientific Laboratories, Inc., was General Scientific Corporation, incorporated on the 11th day of August, 1966, under the laws of the State of Nevada. The present officers, directors or pre-incorporators of General Scientific Corporation, which has outstanding stock options representing an obligation on the part of General Scientific Corp. to issue 44,201 shares of its Common Capital Stock. Although the aforementioned stock options are prematurely granted by General Scientific Corp., General Scientific Laboratories, Inc., acknowledges the liability of its predecessor (see Financial Statements) to these option holders, and it is intended that the Corporation will offer shares in the same class and amount to which they are presently entitled, pursuant to their stock options, or the Corporation will offer to purchase their options at their cost.

BUSINESS

Since inception, the Corporation has engaged in the research and development of products for industry in the general areas of the applied sciences at the Corporation's home office, where it occupies under lease 2500+ square feet of building space, wherein a modern scientific research laboratory has been installed and equipped, together with executive offices, at 3177 South Highland Drive, Las Vegas, Nevada.

The Corporation has a five year lease at an annual rental of $5,400.00, with an option to purchase. The purchase option stipulates that none of the rental payments shall be credited toward the total purchase price of $72,000.00 plus 7200 shares of stock.

BUSINESS (Continued)

In addition to the Corporation's engagement in a number of scientific interdisciplinary projects, it has designed and developed a new muscle stimulator which could have industrial potential. It is small enough to be carried in a pocket or purse and has provision to dial the muscle to be exercised anywhere in the body. It can be used while traveling, sitting at a desk, driving an automobile or just walking about. It is designed to have no wires or other external connections, and both are less costly to manufacture. Patent applications on file in the Patent Office are: S.N. 598.495 on induction or radio energized pad; S.N. 598.845 on portable pad with self contained electronics; S.N. 608-317 on body garment with built-in pads, wiring and commutator.

The Corporation has also developed a system for airfield ground traffic control which is planned to assist airports where traffic control of aircraft has become a serious problem. With this system it is expected that an aircraft that is landing can be taken over a few feet from the ground and directed to its ultimate destination by computers. This system is designed to operate when the airfield may be completely blacked out. It is believed that conventional radio communication need not be employed for ground operation of the airfield. Patent number 3099834 has been issued by the Patent Office covering this system.

The Corporation owns a 3% royalty on the net selling price (i.e. billed price less discounts, shipping costs and commissions of sale) of a new transportation safety device covered by U.S. letter patents #S.N. 553,095 and others to follow. This device consists of a new type of tire valve which is designed to indicate the air pressure in automobile, airplane, or truck tires while stationery or driving. The indicator can be located directly before the driver, and a warning signal and/or light indicate to the driver that the tire air pressure has reached a dangerous condition. No batteries of any kind are used in the valve and no wire connections to the wheels are made. Such a device, if successful, can warn the driver of pending dangerous conditions in the tires.

CORPORATION'S FUTURE PLANS

The Corporation is negotiating with agencies of a Central American country for the construction of a pharmaceutical plant which will manufacture a number of pharmaceuticals, medicines and some insecticides. This plant will be a subsidiary corporation which will utilize raw materials available in the area and will supply its products to the countries of the Central American Common Market. The Corporation will own 75% of the stock of this subsidiary with local Central American citizens owning the other 25%.

It is anticipated that all the financing required by the subsidiary corporation will be made available by institutions within the Central American country. A construction site has been obtained and final architectural and building specifications are now complete.

MANAGEMENT

The Corporation's officers and directors, the number of shares of stock beneficially owned by them and brief descriptions of their backgrounds and business experiences are as follows:

NAME	OFFICES HELD	NUMBER OF SHARES
Dr. Robert I. Sarbacher	President, Treasurer and Director	973,500
Clayton D. Gasque	Executive Vice President and Director	10,000
Michael J. Martini	Vice President and Director	16,900
Madison B. Graves	Secretary and Director	10,000
Robert Goldstein	Executive Secretary and Director	70,000

DR. ROBERT I. SARBACHER:

Dr. Sarbacher held his first important position as Assistant to the renowned Dr. Chaffee, Head of Harvard's Engineering and Applied Physics Department. Prior to his academic work at Harvard, Dr. Sarbacher's educational training was secured at Princeton, where he studied under Dr. Einstein and at other universities in the east.

He taught at Harvard, the Illinois Institute of Technology and Radcliffe and became Dean of the Graduate School of Georgia Institute of Technology, where he also served as Chairman of the Graduate Council.

DR. ROBERT I. SARBACHER (Continued):

In the industrial world, Dr. Sarbacher served as President and Director of Research for National Scientific Laboratories, Washington, D.C.; Prosperity Co., Inc., Syracuse, New York; Allies Products Corporation, Miami, Florida; Bowser, Inc., Chicago; Gudeman Co., Chicago: Joseph Weidenhoff, Inc., Algona, Iowa; Electrofile Corporation, New York; Briggs Filtration Co., Washington, D.C.; and as Vice President of Maguire Industries, Inc., New York. He was institutional representative at the Oak Ridge Institute for Nuclear Studies and a member of the Advisory Council, War Assets Administration.

Dr. Sarbacher also served as Professional Lecturer, George Washington University, Washington, D.C., and as a member of the Nuclear Energy Committee of the National Manufacturers Association.

He has written many books and scientific articles. Dr. Sarbacher's Encyclopedic Dictionary of Electronics and Nuclear Engineering, into which he has invested more than $90,000.00 of his own funds for research and manuscript preparation, constitutes a crowning achievement and fundamental contribution to the scientific world. His consulting firm, Robert I. Sarbacher & Associates was located in Washington, D.C.

He will be assisted by a staff of qualified engineers, draftsmen and technicians and will have available for consultation the leading scientists in the United States.

Dr. Sarbacher's residence address is 3817 Central Park Drive, Las Vegas, Nevada.

CLAYTON D. GASQUE:

A lawyer and public accountant, Mr. Gasque was President and General Manager of the South's largest truck farms for ten years. He operated a furniture manufacturing company for ten years and has been closely related to the operations of several phases of governmental activities for the past 25 years. His address is 3701 Connecticut Avenue, Northwest, Washington, D.C.

MICHAEL J. MARTINI:

Mr. Martini has been President and Director of Servus Products Co., Inc. of Washington, D.C. since its organization in 1956 and President and Director of Snider International Corp. of Maryland since 1967. He has a background in Business Administration. His residence address is 925 First Street, S.E., Washington, D.C.

MADISON B. GRAVES:

Madison B. Graves is a lawyer and the senior member of the law firm of Morse & Graves, Las Vegas, Nevada. He is a former United States Attorney for Nevada and a Past-President of the State Bar Association of Nevada. His address is 116 South 4th Street, Las Vegas, Nevada.

ROBERT GOLDSTEIN:

Mr. Goldstein is owner and President of General Plumbing and Heating Co., Inc., Las Vegas, Nevada, for the past 20 years. He is also Secretary-Treasurer and a Director of Raymond Construction Co., Los Angeles, California and Las Vegas, Nevada. He has a background in Technical Business Administration. His residence address is 2812 Ashwood Circle, Las Vegas, Nevada.

No officers or directors, with the exception of Dr. Sarbacher will be paid any salary until actively engaged in profitable operations, which is estimated to be a minimum of six months to one year.

No other employment contracts have been executed with any other officer or director, and none are contemplated.

None of the above officers have active or working control of any company doing business with the issuer, except the general counsel, Mr. Madison B. Graves.

All other Pre-Incorporators, other than those listed above, own less than 10% of the outstanding stock.

ACCOUNTING AND LEGAL COUNSEL

Certified Public Accountant:

Daniel Goldfarb
Certified Public Accountant
846 East Sahara
Las Vegas, Nevada

General Counsel:

Madison B.Graves,Esq.
Attorney at Law
116 South 4th
Las Vegas, Nevada

Patent Attorney:
Boris Haskel, Esq.
Attorney at Law
Warner Building
Washington, D.C.

EMPLOYMENT CONTRACT

The Corporation has executed a five-year employment contract with Dr. Sarbacher, with provisions for renewal, wherein Dr. Sarbacher shall devote his time and effort to the business affairs of the Corporation. The employment contract specifies a salary of $2,000.00 per month with provisions for adjustment. All right, title and interest of patents, products and processes developed shall remain the property of the Corporation as per the terms of said contract.

CAPITALIZATION AND DESCRIPTION OF STOCK

The Corporation's capitalization on formation was 5,000,000 shares of Common Stock, par value $1.00 per share. The amount of stock outstanding and to be outstanding is as follows:

Title	Amt.Authorized As At Sept.10,1967	Amt.Outstanding As At Sept.15,1967	Amt.to be Outstanding If All Shares Offered Are Sold	Amount of Shares Held By Corp.
Common Stock	4,500,000	1,353,400	1,448,500(*1)	3,051,500(*2)
Common Stock	500,000	-0-	500,000	-0-

(*1) This figure includes 50,000 shares underlying the option to Louis M. Burgess, and 45,100 shares underlying the options outstanding in the Corporation's Predecessor, General Scientific Corp. (see caption "Predecessor").

(*2) This stock is held by the Corporation for trading, acquisitions or later sale.

All of the outstanding stock is owned by pre-incorporators.

All stock is non-assessable and has full non-cumulative voting rights and no pre-emptive rights; and when issued, all shares will be fully paid.

ANNUAL MEETINGS, FINANCIAL REPORTS AND PROXIES

The Corporation intends to furnish stockholders with a Certified Statement of Income and a Certified Balance Sheet after the close of each fiscal year. The Corporation has no definite plans as to the nature or frequency of other reports to be issued to stockholders.

The Corporation will hold annual meetings on the first day of May of each year, solicit proxies and furnish to stockholders proxy statements in substantially the form set forth in Regulation 14 to the Securities Exchange Act of 1934 in connection with such meetings.

USE OF PROCEEDS

In the event all of the stock offered hereby is sold, the net proceeds to the Corporation will be $800,000.00 after payment of the Corporation's expenses.

It is presently contemplated that these proceeds will be utilized in the following amounts and order of priority (and to the

extent feasible). The Corporation reserves the right to revise its plans insofar as the application of proceeds is concerned.

Commissions and Discounts	$150,000.00 (1)
Expenses of the Issue	$ 50,000.00 (2)
General Working Capital	$800,000.00 (3)
	$1,000,000.00

(1) In view of the agreement wherein no commissions on the sale of stock shall be paid to officers, the proceeds to the Corporation may be greater than as set forth in the above tabulation.

(2) In connection with this issue, the Corporation is obligated to pay for any expenses in connection with the filing of the Letter of Notification and Offering Circular, sales literature and stock certificates, original issue stamps, transfer agents charges, fees and disbursements of its counsel and accountants and expenses of qualification under Nevada State Law.

(3) As indicated under "Business," the Corporation has designed and developed a muscle stimulator and a system for airfield ground traffic control in addition to the projects mentioned in this Prospectus. The working capital is intended to be used to produce models, prototypes and manufacturing facilities in addition to further research and development of other processes and products.

Since the offering is on a best efforts basis, there is no assurance that the entire proceeds referred to above will be received by the Corporation. In the event less than the full amount of proceeds is received, the funds will be retained by the Corporation and any funds received from the sales of the shares will not be returned to purchasers.

UNDERWRITING ARRANGEMENTS

The Corporation, functioning as its own Underwriter, will use its best efforts to sell to residents of the State of Nevada (the public) the securities offered hereby. All or part of the securities may be offered by the Underwriter to members of the National Association of Security Dealers, Inc., in compliance with the National Association of Security Dealers, Inc., Rules of Fair Practice, Section 25.

The Corporation, without obligation,may terminate this agreement prior to the effective date of this offering if it determines that the financial, market conditions or adverse material changes in the affairs of the Corporation make it inadvisable to offer the securities, or after the effective date, at the expiration of twelve months as to any securities then remaining unsold.

LEGAL OPINIONS

Legal matters, in connection with the Nevada State Securities Laws, as amended, have been passed upon for the Corporation by Madison B. Graves, Esq., Las Vegas, Nevada.

To the best of the Corporation's knowledge, there are no legal proceedings pending or threatened against it.

TRANSFER AGENT

First National Bank of Nevada, Las Vegas,Nevada, Main Office.

METHOD OF SUBSCRIPTION

Checks or money orders in payment for the stock in the amount of $2.00 per share for the number of shares subscribed for should be made payable to "GENERAL SCIENTIFIC LABORATORIES, INC."

The form of Stock Subscription, annexed to this Offering Circular, should be completed and signed. These papers should then be either:

(1) Handed to the sales agent

OR

(2) Mailed or delivered to:

GENERAL SCIENTIFIC LABORATORIES, INC.
3177 South Highland Drive
Las Vegas, NEVADA

The Corporation promptly will acknowledge receipt of each subscription and payment, and within a few days thereafter will cause to be issued and delivered a certificate or certificates for the number of shares of stock subscribed and paid for in accordance with the instructions contained in the form of Stock Subsciption.

GENERAL SCIENTIFIC LABORATORIES, INC.
Statement of Financial Condition
As At July 31, 1967

September 11,1967

Board of Directors
General Scientific Laboratories, Inc.
3177 South Highland Drive
Las Vegas, Nevada

Gentlemen:

Pursuant to your request, we have examined the books and records of General Scientific Laboratories, Inc. for the period April 10, 1967 to July 31, 1967 and as a result thereof have prepared a statement of financial condition as at July 31, 1967.

GENERAL COMMENTS

ASSETS

Cash in bank		13,040.88
Cash on deposit in First National Bank of Nevada, Convention Center Branch, Las Vegas, Nevada		
Regular checking account	402.66	
Trust account	12,638.22	
Total		13,040.88

The above represents book balances as at July 31, 1967, reconciled by us with bank statements and verified by direct correspondence with the bank. The trust account indicated above is not a trust fund but merely a bank account from which periodic transfers of funds are made into the regular account by Mr. James Ordowski attorney at law. Monies received by Mr. Ordowski to date represent invested capital and we have been advised that these funds will be transferred in total into the regular account as soon as the company begins its project operations.

Advances to Dr. Robert I. Sarbacher	2,154.50

The above includes expenditures made in behalf of Dr. Sarbacher and are considered to be advances as of this date.

Inventory Supplies	27,801.40

The above represents costs of supplies on hand as determined by the appraisal of Thomas de Bruyn, Professional Engineer, dated June 13, 1967, a copy of which is attached herewith and detailed as follows:

Inventory supplies - biological	5,324.67	
Inventory supplies - electrical and nucleonic	18,832.86	
Inventory supplies - chemical	3,643.87	
Total		27,801.40

Fixed assets	145,299.86

The following fixed assets represents expenditures from General Scientific Laboratories Inc regular bank account during the period April 10, 1967 to July 31, 1967.

Air conditioning equipment		1,371.32	
Leasehold improvements - in process		13,937.81	15,309.13

No provision has been made for depreciation on air conditioning equipment or amortization of leasehold improvements.

The following fixed assets are detailed in the attached letter of appraisal from Thomas de Bruyn, Professional Engineer.

Equipment - biological per letter	43,407.61		
additional costs per books	153.00		
		43,560.61	
Equipment - electrical and nucleonic		62,141 30	
Equipment - office		6,651.19	
Equipment - shop	8,362.67		
additional costs per books	186.02		
		8,548.69	
Library books		7,753.23	
Small tools, gauges and instruments		1 335.71	129,990.73
Total fixed assets			145,299.86

Pre-operating expenses 23,650.93

The above includes expenditures paid to date representing pre-operating and organizational expenses. No provision has been made for amortization of these expenses at this time.

Incorporation costs 500.00

The above represents legal fees in connection with the incorporation of General Scientific Laboratories, Inc. No provision has been made for the amortization of these costs at this time.

Project costs 9,858.41

The above costs represent expenditures to date on the related projects and do not reflect total project costs or loan commitments.

Patent costs 77,835.19

Patent costs are detailed in the attached letter of appraisal from Thomas de Bruyn Professional Engineer of Las Vegas, Nevada, as follows:

Air-ground traffic controls patent application #3099834	53,125.00	
Muscle stimulator and body garment with built-in pad wiring and commutator application #SN598495, #SN598845 and #SN608317	24,710.19	
Total		77,835.19

LIABILITIES

Accounts payable 2,525.02

The above represents the following liabilities:

Daniel Goldfarb	200.00	Kelly Services	352.01		
Sparklets	50.47	IBM Typewriter	12.88		
Printers of Hollywood	14.73	Staples Cab. Shop	120.80		
SPD Office Supply	220.60	Bruner Corp.	153.00		
Vans Builders	137.17	General Plumbing	60.00		
Nevada Power Company	116.51	CentralTelephoneCo.	309.09		
Robert Goldstein	423.26	James Ordowski	267.50	2,525.02	

Invested capital 297,616.15

General Scientific Laboratories, Inc. was incorporated on April 10, 1967, in the City of Las Vegas, County of Clark, State of Nevada. It has a capitalization of five million shares of common stock at $1.00 par value. To date invested capital represents the following:

Cash invested	62,327.85	
Invested capital credit to Dr. Robert I. Sarbacher, applicable to equipment, supplies, books, small tools, gauges, instruments and patents as detailed in attached letters from Thomas de Bruyn, Professional Engineer	235,288.30	
Total		297,616.15

OTHER GENERAL COMMENTS

Dr. Robert I. Sarbacher, has for valuable consideration, assigned to General Scientific Laboratories, Inc. all of his right, title and interests in the equipment, supplies, library books, small tools, gauges and instruments as listed in the letter of inventory evaluation dated June 13, 1967 from Thomas D. de Bruyn, Professional Engineer, as well as all rights to the patents listed in the second letter attached from Mr. de Bruyn which refer to those patents applicable to the airfield-ground traffic control, muscle stimulator and body garment with built-in pad wiring and commutator. Dr. Sarbacher will be issued shares of stock in this corporation, the number to be determined by both he and the Board of Directors, following a mutual agreement as to comparable value. As of this date, no stock has been issued to any of the investors.

SCOPE OF EXAMINATION

My examination of the books and supporting records was made in accordance with generally accepted accounting procedures. As noted above, the valuation of certain assets assigned was based upon the inventory evaluation and verification of historical costs as indicated in the letters attached from Thomas D. de Bruyn, Professional Engineer, dated June 13, 1967. Mr. de Bruyn and his staff prepared a physical inventory of the fixed assets which is in support of his summary evaluations. Except for my non-verification of the inventories of fixed assets and patent costs, in my opinion, the accompanying statement of financial condition presents fairly the financial position of this corporation at July 31, 1967 in conformity with generally accepted accounting principles applied on a consistant basis.

Respectfully submitted,

Daniel Goldfarb CPA

DANIEL GOLDFARB

GENERAL SCIENTIFIC LABORATORIES, INC.
STATEMENT OF FINANCIAL CONDITION
As at July 31, 1967

ASSETS

CURRENT ASSETS:			
Cash on hand and in bank		13,040.88	
Advances to Dr. Robert I.Sarbacher		2,154.50	
Inventory supplies		27,801.40	
TOTAL CURRENT ASSETS			42,996.78
FIXED ASSETS:			
Air conditioning equipment		1,371.32	
Leasehold improvements, in process cost		13,937.81	
Equipment - biological		43,560.61	
Equipment - electrical and nucleonic		62,141.30	
Equipment - office		6,651.19	
Equipment - shop		8,548.69	
Library books		7,753.23	
Small tools, gauges and instruments		1,335.71	
TOTAL FIXED ASSETS (not including provision for depreciation)			145,299.86
DEFERRED CHARGES AND OTHER ASSETS:			
Pre-operating expenses		23,650.93	
Incorporation costs		500.00	
Project costs -San Salvador	9,678.91		
Project costs -tire valve	179.50	9,858.41	
Patent costs		77,835.19	111,844.53
TOTAL ASSETS			300,141.17

LIABILITIES AND CAPITAL

CURRENT LIABILITIES:	
Accounts payable	2,525.02
INVESTED CAPITAL:	
Common stock authorized 5,000,000 shares @$1.00 par value, stock to be issued	
Invested capital as at July 31, 1967	297,616.15
TOTAL LIABILITIES AND CAPITAL	300,141.17

Subject to comments in accompanying letter.

EQUITY SECURITY

Prior to application for registration under Nevada Securities Act, Chapter 90 N.R.S., as Amended in 1967, cash in the amount of SIXTY ONE THOUSAND NINE HUNDRED ($61,900.00) DOLLARS was advanced by:

(1)	Salvatore I Pellento and Annette T. Pellento, as Joint Tenants....	$ 5,000.00
(2)	William A. Hamilton and Mary Jane Hamilton, as Joint Tenants.....	$ 5,000.00
(3)	Joseph Rosky and Mitzi Rosky, as Joint Tenants.....	$ 6,000.00
(4)	Milton Dubrov.....	$ 10,000.00
(5)	Lawrence Shulman and Carole G. Shulman, as Joint Tenants.....	$ 5,000.00
(6)	Benjamin H. Cohen and Gloria G. Cohen, as Joint Tenants.....	$ 5,000.00
(7)	Salvatore D. Gallotta and Marie B. Gallotta, as Joint Tenants.....	$ 10,000.00
(8)	Michael J. Martini.....	$ 6,900.00
(9)	Miss Dorothy Webb.....	$ 9,000.00
	TOTAL.	$ 61,900.00

to the Corporation in order to meet certain obligations and provide working capital. Also, Dr. Robert I. Sarbacher contributed certain equipment and supplies, in the amount of $157,453.85. The evaluation of this equipment and supplies was prepared by Thomas de Bruyn, P.E., of Nevada, who certified the above figures.

The stockholders approved the issuance of common stock to the above named pre-incorporators to satisfy the cash advances they made at the rate of one share of common stock for each dollar advanced, and to Dr. Sarbacher, the issuance of 150,000 shares to cover the personal property assigned by him to the Corporation. All of the pre-incorporators above named agreed to hold the certificates of common stock for a period of one year from the date of registration under Nevada Securities Act to comply with N.R.S. 90.155, said certificates being as follows:

CERTIFICATE NO.	TO	SHARES
001	Salvatore I. Pellento and Annette T. Pellento, as Joint Tenants with Right of Survivorship	5,000.00
002	William A. Hamilton and Mary Jane Hamilton, as Joint Tenants with right of Survivorship	5,000.00
003	Joseph Rosky and Mitzi Rosky as Joint Tenants with Right of Survivorship	5,000.00
004	Milton Dubrov	10,000.00
005	Lawrence Shulman and Carole G. Shulman, as Joint Tenants, with Right of Survivorship	5,000.00
006	Benjamin H. Cohen and Gloria G. Cohen, as Joint Tenants with Right of Survivorship	5,000.00
007	Salvatore D. Gallotta and Marie B. Gallotta, as Joint Tenants with Right of Survivorship	10,000.00
008	Michael J. Martini	6,900.00
009	Dr. Robert I. Sarbacher	150,000.00
010	Miss Dorothy Webb	9,000.00
011	Joseph Rosky and Mitzi Rosky as Joint Tenants with Right of Survivorship	1,000.00

Letters attesting to the retention of this stock, signed by each of the above stockholders were attached to the minutes of the Stockholders' Meeting held on September 3,1967. Each certificate was stamped with the following legend:

"The shares represented by this certificate have not been registered under the Securities Act of 1933. The shares have been acquired for investment and may not be sold, transferred,

pledged, or hypothecated in the absence of an effective Registration Statement for the shares under the Securities Act of 1933, or an opinion of counsel to the company that registration is not required under said Act."

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of September 1967.

DANIEL GOLDFARB

Certified Public Accountant

Thomas D. de Bruyn, P.E.
CONSULTING ENGINEER
Registered
Professional Engineer
Nevada No. 753

(702) 384-0264
1734 South Main Street
LAS VEGAS, NEVADA 89105

June 13, 1967

General Scientific Laboratories, Inc.
3177 South Highland Drive
Las Vegas, Nevada

Gentlemen:

I have verified the costs accrued to the development of these patent applications and patents.

The costs, in total are listed below:

1. Patent #3099834, Airfield-ground traffic control

Labor, Direct	$ 41,099.00
Labor, Indirect	8,341.00
Material & Supplies	2,166.00
Travel	1,020.00
Patent	500.00
	$ 53,125.00

2. Patent Application #SN598,495, Induction energized pad for muscle stimulator.

3. Patent Application #SN598,845, on portable pad with self-contained electronics for muscle stimulator.

4. Patent Application #SN608,317, on body garment with built in pad, wiring and commutator.

Labor, Direct	$ 14,336.76	(Item 2,3 and 4
Material & Supplies	2.504.73	are grouped in this
Travel	6,268.70	breakdown)
Patent Attorneys	1,600.00	
	$ 24,710.19	

These patents are unencumbered in any way and are assigned to the General Scientific Laboratories.

Very truly yours,

DE BRUYN ENGINEERING

By: Thomas D. de Bruyn, P.E.

TDDB/pb

Member NSPE - AWWA - ASHRAE - CEC

Registered
Professional Engineer
Nevada No. 753

Thomas D. deBruyn, P.E.
CONSULTING ENGINEER

(702) 384-0264
1734 South Main Street
LAS VEGAS, NEVADA 89105

June 13, 1967

General Scientific Laboratories, Inc.
3177 Highland
Las Vegas, Nevada

Gentlemen:

We have completed the inventory evaluation for your equipment and supplies located at 3177 Highland, Las Vegas, Nevada. This material has been classified as follows:

1.	Equipment -Biological.....	$ 43,407.61
2.	Equipment -Electrical and Nucleonic.....	$ 62,141.30
3.	Equipment -Office and Supplies.....	$ 6,651.19
4.	Equipment -Shop.....	$ 8,362.67
5.	Supplies -Biological.....	$ 5,324.67
6.	Supplies -Electrical and Nucleonic.....	$ 18,832.86
7.	Supplies -Chemical.....	$ 3,643.87
8.	Library Books.....	$ 7,753.23
9.	Small Tools, Gauges & Instuments.....	$ 1,335.71
	TOTAL	$157,453.11

All of this material has been priced by manufacturer's invoice or a supply house invoice, by commercial catalogue, and in a few cases, by our evaluation and estimates. The inventory list attached indicate in each case the supplier, the invoice number, catalogue number or estimate.

Three units of your equipment, broken in shipment, are covered by insurance and will be replaced as soon as the claim is settled. These are: Biological Equipment, Item 1, Page 6, Kipp Gas Generator, VWR Catalogue Number 32420- $93.83; Biological Equipment, Item 2, Page 6, Vacuum Manometer, VWR Catalogue Number 31742 - $65.00; and Biological Equipment, Item 83, Page 3, Ronco Model WT Doplicell - $65.25.

One unit of Chemical Supplies has been broken in shipment and will be replaced by the insurance company. This unit is Chemical Supplies, Item 1, Page 2, 5 lbs. of Sulphur - $6.50.

Note: When the extensions of the unit price appear to be a few cents in excess of the product of the quantity and the unit price, this is because postage which was billed on the invoice has been included.

This work has been performed by professional engineers familiar with the equipment and supplies, and we certify that the above figures are accurate and correct to the best of our knowledge and belief.

Sincerely,

DE BRUYN ENGINEERING

BY Thomas D. de Bruyn
Thomas D. de Bruyn, P.E.
Consulting Engineer

TDB/pb

[DEFENDANT'S EXHIBIT 3(a)]

United States District Court

FOR THE
NORTHERN DISTRICT OF TEXAS

TRUE COPY
ATTEST: March 5 1970
Elmore Whitehurst
Referee in Bankruptcy
By Pinkerton, Deputy

IN THE MATTER OF

UNIVERSAL CREDIT CARDS, INC., et al
Snak-Bar, Inc., Western Star Distributing, Inc., Star Warehousing, Inc., Foodco Finance & Lease, Inc., Concentrated Food Corporations, Technomatic Industries, Inc., Kuppamatic Distributing Co., Inc., World Wide Manufacturing Corp., & Hamby Industries, alter egos of Universal Credit Cards

Bankrupt.

IN BANKRUPTCY

No. BK-3-572

ORDER APPROVING APPOINTMENT OF TRUSTEE
OR
APPOINTMENT OF TRUSTEE BY REFEREE

At Dallas, Texas, in this district, on the 6th day of May, 1966.

[If the creditors elect a trustee, use paragraph (1) and strike paragraph (2); if the creditors fail to elect a trustee, use paragraph (2) and strike paragraph (1).]

(1) Philip I. Palmer, Jr., of Dallas, Texas, having been appointed trustee of the estate of the above-named bankrupt by his creditors, as provided in the Bankruptcy Act,

IT IS ORDERED that the appointment of Philip I. Palmer, Jr., as trustee be, and it hereby is, approved, and the amount of his bond is fixed at $10,000.00 dollars.

(2) The creditors of the above-named bankrupt having failed to appoint a trustee as provided in the Bankruptcy Act, , of , is hereby appointed trustee of the estate of the bankrupt, and the amount of his bond is fixed at dollars.

/s/ Elmore Whitehurst
Referee in Bankruptcy.

FPI MI—2-5-66-1M PADS-1760

[DEFENDANT'S EXHIBIT 3(b)]

United States District Court

FOR THE

NORTHERN DISTRICT OF TEXAS

IN THE MATTER OF
UNIVERSAL CREDIT CARDS, INC., SNAK-BAR, INC., WESTERN STAR DISTRIBUTING, INC., STAR WAREHOUSING, INC., FOODCO FINANCE & LEASE, INC., CONCENTRATED FOOD CORPORATIONS, TECHOMATIC INDUSTRIES, INC., KUPPAMATIC DISTRIBUTING CO., INC., WORLD WIDE MANUFACTURING CORP & HAMBY INDUSTRIES

IN BANKRUPTCY
NO. BK 3-572
Bankrupt.

ORDER APPROVING OPERATING TRUSTEE'S BOND

At Dallas, Texas, in said district, on the 16th day of May, 19 66

The above named Universal Credit Cards, Inc., and its alter egos, having been duly adjudged a bankrupt on a petition filed by/of against them/him on the 14th day of Feb., 19 66;

and Philip I. Palmer, Jr., of Dallas, Texas, in said district having been duly appointed trustee of the estate of said bankrupt, and having duly qualified by giving a bond with sufficient sureties for the faithful performance of his official duties in the amount fixed by the order of this court, viz., Ten thousand and ----------00/100 dollars;

IT IS ORDERED that the said bond be, and it hereby is approved.

A TRUE COPY
ATTEST: March 5 19 66

Elmore Whitehurst
Referee in Bankruptcy.

FPI MI—1-12-68-2,500 PADS-1641

Referee in Bankruptcy
By Jeanette Fowler, Chief Clerk.

[DEFENDANT'S EXHIBIT 3(c)]

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

IN THE MATTER OF	)	
	)	No. BK-3-572
UNIVERSAL CREDIT CARDS, INC.,	)	
	)	
BANKRUPT	)	

ORDER DIRECTING THE RECEIVER TO TAKE POSSESSION OF PROPERTY AND ASSETS OF THE ESTATE AND WRIT OF INJUNCTION

BE IT REMEMBERED that heretofore, on the 7th day of April, 1966, came on to be heard before the Court the application of the Receiver of the above styled and numbered estate now pending in this Court, and being administered herein, praying for an order authorizing and directing him as Receiver of the Estate of UNIVERSAL CREDIT CARDS, INC., Bankrupt, to take possession of the assets and properties of the following companies:

SNAK-BAR, INC.
WESTERN STAR DISTRIBUTING, INC.
STAR WAREHOUSING, INC.
FOODCO FINANCE & LEASE, INC.
CONCENTRATED FOOD CORPORATIONS
TECHOMATIC INDUSTRIES, INC.
KUPPAMATIC DISTRIBUTING CO., INC.
WORLD WIDE MANUFACTURING CORP.
HAMBY INDUSTRIES

Thereupon the Court heard the application of the Receiver, the evidence introduced and the statement and argument

of counsel, and it appearing to the Court that due and proper notice and summons in this proceeding has been had of the Receiver herein, and the parties herein named have been given sufficient time within which to answer such application, and that heretofore on the 25th day of March, 1966, this Court entered its order herein granting the temporary relief prayed for by the Receiver herein, and such order further provided that the Irving Bank & Trust Company may file in this estate its application for the purpose of reopening this proceeding, and for similar relief, and that in the event such application were filed, that hearing thereon would be had on April 7, 1966, at the hour of 11:00 A. M., and the Court here and now finds that such bank has not filed such application for reopening this proceeding, and such order and this order should therefore be considered and deemed to be a final order as to such bank; and it further appearing to the Court and the Court here and now finding that the Receiver herein, PHILIP I. PALMER, JR., has prayed for an order restraining and enjoining the individuals C. A. HAMBY, JR., PAUL HAMBY, WILLIAM T. FULLER and CHARLES E. EDWARDS from in any manner transferring, conveying, hypothecating or mortgaging any of the properties and assets of said corporations herein named, and from in any manner changing the status of such corporations pending the show cause order herein, and that such order enjoining such parties should be made permanent, and upon the date and time specified in such show cause order,

that is, on March 25, 1966, there appeared before this Court the Receiver, PHILIP I. PALMER, JR. and his attorneys, and Hon. John Rogers, attorney for C. A. HAMBY, JR., and for PAUL HAMBY and the Hon. Alfred Sallinger as attorney for WILLIAM T. FULLER and CHARLES E. EDWARDS. All of the aforesaid parties hereinafter referred to as Respondents failed to file any response to the show cause order issued as to them, and thereupon such parties through their counsel, including Hon. James Allen, who also entered his appearance in this cause on behalf of and as counsel for C. A. HAMBY, JR. and PAUL HAMBY; and it appeared to the Court that no tion of the Receiver herein, and no objection has been made by any person, firm or corporation to the granting of the full relief sought by the Receiver, and that based upon such application, the testimony, the record before the Court, and the statement of counsel, the full relief sought by PHILIP I. PALMER, JR., as Receiver should be granted to him, and that the material allegations of his application are true and supported by the record before the Court, and that this order should be entered herein as an order supplementing the prior order of this Court, and the Court finds that the corporation and corporate names hereinbefore set out constitute names and corporations under which the bankrupt operated, and that such companies are subsidiaries or conduits for the bankrupt's operations, and that they are instrumentalities under and through which

the bankrupt conducted and operated its business, and that such companies are part of the bankrupt and of its operations, and should be considered as such, and that the affairs, financial operations and transactions of the bankrupt are intermingled with the affairs, financial operations and transactions of such companies, as to become indistinguishable one from the other, and that such businesses, transactions and operations have been conducted and operated by and through the same individuals and officers and under the same control and direction, and such companies should be considered as part of the same enterprises and operations, and the assets and properties of such companies should be administered in bankruptcy in this cause, and that they should be adjudicated bankrupts herein and the date of bankruptcy with respect to such corporations to be as of the date of bankruptcy of UNIVERSAL CREDIT CARDS, INC., and the assets and properties of such corporations to be administered in bankruptcy herein, and as part of the estate of the bankrupt herein, subject to power and right of the court to classify and subordinate claims against this estate, and to marshal the assets of the same; and in accordance with these findings and this opinion of the Court, it is hereby

ORDERED, ADJUDGED and DECREED that the order entered herein as the result of the hearing on March 25, 1966, be and same is hereby confirmed, and that the injunction therein granted

be and same is her by continued in full force and effect as a permanent injunction; and the Respondents herein, being SNAK-BAR, INC., WESTERN STAR DISTRIBUTING, INC., STAR WAREHOUSING, INC., FOODCO FINANCE & LEASE, INC., CONCENTRATED FOOD CORPORATIONS, TECHOMATIC INDUSTRIES, INC., KUPPAMATIC DISTRIBUTING CO., INC., WORLD WIDE MANUFACTURING CORP. and HAMBY INDUSTRIES, INC., their officers, directors, employees, agents, attorneys and representatives, and C. A. HAMBY, JR., PAUL HAMBY, WILLIAM T. FULLER and CHARLES E. EDWARDS, are hereby permanently enjoined from in any manner interfering with the Receiver and the Trustee of this estate subsequently to be appointed in this cause in his possession of the properties and assets of such companies, wheresoever located, and that such corporations are hereby adjudicated bankrupt herein as of the date of bankruptcy in this cause, and C. A. HAMBY, JR. and PAUL HAMBY are directed to file proper schedules and statement of affairs for such corporations, and such corporations and individuals, their officers, directors, employees, agents, attorneys and representatives be and they are hereby permanently enjoined from in any manner changing the status of such corporations or altering the same in any manner, and from in any manner transferring, conveying, hypothecating or mortgaging any of the properties and assets of the above named corporations, and they are hereby directed and commanded to deliver all of such assets of all such corporations to such Receiver and Trustee in Bankruptcy

* * *

[DEFENDANT'S EXHIBIT 4]

ASSIGNMENT

WHEREAS on the 20th day of August, 1965, Thrift Credit Corporation assigned certain instruments, documents, and rights to Hamby Industries, Inc. and C. A. Hamby, which instruments, documents and rights are more specifically hereinafter described, and

WHEREAS Hamby Industrics, Inc. has been adjudicated a Bankrupt by the United States District Court for the Northern District of Texas, Dallas Division in Cause No. BK 3-572, and

WHEREAS Philip I. Palmer,Jr. is the duly elected, qualified and acting Trustee in Bankruptcy in that proceeding, and is now involved in various matters of litigation arising out of that transaction, and

WHEREAS I, C. A. Hamby, have been advised by Philip I. Palmer, Jr. that some of the Defendants in those proceedings are contending that Philip I. Palmer, Jr.,as Trustee in Bankruptcy of Hamby Industries, Inc. not vested with all of the right, title and interest to those various choses in action or causes in action,

NOW, THEREFORE, C. A. Hamby, do hereby assign, transfer, release and quit claim unto Philip I. Palmer, Jr., as Trustee in Bankruptcy of Hamby Industries, Inc. all of my right,title and interest in and to all items assigned by Thrift Credit Corporation as above outlined including the following:

Loan Agreement, dated July 27, 1965 by and between Thrift Credit Corporation as Lender, Parliament House Motor Inns, Inc., Parliament House of Clearwater, Inc. and Orlando Motor Hotels, Inc. as borrowers; and Floyd L. Shellman, Betty J. Shellman, Byron E. Prugh, Helen F. Prugh, Ned Eddy, Sr., and Julie Eddy, individually;

Service of a copy of this order shall be had upon respondents by service upon their counsel.

DATED AT DALLAS, TEXAS, this 12 day of April 1966.

Elmore Whitehurst
Referee in Bankruptcy

I hereby certify that the foregoing is a true copy of the original thereof now in my office this the 5th day of March 1970 at Dallas, Texas.

Elmore Whitehurst
Referee in Bankruptcy

By Lonetta Spiden Chief, Clerk

[DEFENDANT'S EXHIBIT 5]

WHEREAS, UNIVERSAL CREDIT CARDS, INC. has been adjudicated as bankrupt under the provisions of the Bankruptcy Act in a certain procceding which is styled IN THE MATTER OF UNIVERSAL CREDIT CARDS, INC., and which is No. BK 3-572 on the docket of the United States District Court of the Northern District of Texas, Dallas Division, and in such proceedings the court entered its order on April 12, 1966, adjuding and declaring HAMBY INDUSTRIES, INC. to be the alter ego and a subsidiary and adjunct and agent of the bankrupt corporation, and directed the Trustee in Bankruptcy of the Estate of Universal Credit Cards, Inc., Hon. Philip I. Palmer, Jr.,to take over the assets of HAMBY INDUSTRIES, INC., including the causes of action held by HAMBY INDUSTRIES,INC., and to administer such corporation, its affairs and its property as part of the Estate of UNIVERSAL CREDIT CARDS, INC.; and,

WHEREAS, by virtue of such orders of the Bankruptcy Court, the aforesaid PHILIP I. PALMER, JR., as Trustee aforesaid, holds, and asserts a cause of action against ROBERT I. SARBACHER, and upon which such causes of action the said Trustee in Bankruptcy is joined in litigation in the District Court of Dallas County, Texas, and in the Federal District Court for the District of Columbia, and the undersigned desires to convey and assign to the said Trustee in Bankruptcy, PHILIP I. PALMER, JR., all my right, title and interest in and

to any and all causes of action against ROBERT I. SARBACHER, both liquidated and unliquidated, and sounding either in contract or in tort, and every kind, nature and character.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that I, C. A. HAMBY, JR. of the County of Dallas, State of Texas, for and in consideration of the sum of TEN AND NO/100 ($10.00) DOLLARS, cash in hand paid to me, and the receipts of which being hereby admitted and confessed, and other good and valuable consideration, do by these presents hereby transfer, assign and convey unto the said PHILIP I. PALMER, JR., Trustee aforesaid, and in such capacity as Trustee in Bankruptcy aforesaid, all my right, title and interest in and to any and all causes of action, rights of action and claims of every nature and character, both liquidated and unliquidated and whether sounding in tort or in contract, TO HAVE AND TO HOLD unto the said PHILIP I. PALMER, JR., his successors and assigns, and in his capacity as Trustee in Bankruptcy of the Estate of UNIVERSAL CREDIT CARDS, INC., hereby intending by this assignment to convey and assign unto the said PHILIP I. PALMER, JR., as Trustee aforesaid, all rights, claims, causes of action, choses in action that I have or may have or assert against ROBERT I. SARBACHER arising by reason of the relationship between such ROBERT I. SARBACHER and UNIVERSAL CREDIT CARDS, INC., HAMBY INDUSTRIES and myself,

so that all right, title and interest therein shall vest completely and fully in the said PHILIP I. PALMER, JR., Trustee aforesaid.

DATED AT DALLAS, TEXAS, this 31st day of January, 1967, to certify which, witness my hand and seal of office.

C. A. Hamby, Jr.

THE STATE OF TEXAS I

COUNTY OF DALLAS I

BEFORE ME, the undersigned authority, on this day personally appeared C. A. HAMBY, JR., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 31st DAY OF January A. D., 1967.

Martha C. Russell
Notary Public in and for
Dallas County, Texas

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,311

ROBERT I. SARBACHER,

Appellant,

v.

DEXTER L. KOHN and COLEMAN L. DIAMOND,
Trustees, and PHILIP I. PALMER, JR.,
Trustee in Bankruptcy of Hamby Industries, Inc.

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

FRIEDLANDER, FRIEDLANDER
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Washington, D.C. 20005

Attorneys for Appellants

Washington, D. C. · THIEL PRESS · 202 · 393-0625

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IN THE

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Trustee in Bankruptcy of Hamby Industries, Inc.

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. The trial Court's decision that an option contained in a written contract had not been exercised by a now bankrupt corporation or its President, based solely on hear-say evidence, is error; and

2. Where the Court indicated its acceptance of this inadmissible testimony, was the Court also in error in denying Appellant suf-

ficient time to furnish witnesses and other evidence not immediately available, to support the testimony of the Appellant?

3. Was the Court in error in rejecting the appellant Sarbacher's attempt to obtain sufficient time to produce a written memorandum which he for the first time recalled during the course of the trial?

4. Was it necessary for Sarbacher's counsel to employ dilatory tactics in order to stall the trial of the cause so witnesses could be produced on the following day, and was it error for the Court to refuse to adjourn early on the day of trial so as to make possible the presentation of a witness from Texas the following day?

5. Was the Court in error in denying the Appellant's motion to reopen his case in order to present evidence of the existence of a remembered written memorandum of the exercise of the option?

6. Was the denial of a motion for a new trial an abuse of discretion on the part of the trial Court?

7. Was it an abuse of discretion for the Court to deny a motion for new trial, when the ends of justice would be served by a granting of the motion, and the ends of justice *not* served by a denial of the motion?

8. Where the motion for a new trial was supported by a document which was submitted as an exhibit and by the sworn statements supplied to the Court in affidavit form establishing the exercise of the option, was it error for the Court to reject said motion, and did such rejection constitute an abuse of discretion?

The pending case has not been previously before the Court.

REFERENCE TO RULINGS

The Court (Tr. 50) overruled the Appellant's objection to the witness Palmer's summary from records he had read without the records being present or being offered in evidence.

The Court (Tr. 53) overruled Appellant's objection to the witness Palmer's oral summary of the contents of documents he had examined, but the documents were not present nor were they offered in evidence.

Appellant (Tr. 69) requested the Court to allow him to bring in a witness from Texas on the morning following the commencement of the trial, and to continue the case for such purpose. The Court would not.

Appellant (Tr. 69) moved the Court to allow him to reopen his case, and the Court denied said motion.

The Court made findings of fact and reached conclusions of law, all contrary to the evidence and the law (see Findings of Fact and Conclusions of Law. The Court denied Appellant's motion for a new trial on April 9, 1970, and such denial was an abuse of discretion.

STATEMENT OF THE CASE

On the 22nd day of December, 1965 the Appellant herein, Robert I. Sarbacher, hereinafter referred to as "Sarbacher," filed a complaint to set aside a deed of trust and cancel a note, and alleged the circumstances under which he had entered into an agreement for the purchase of shares of stock of four insurance companies in partnership or in a joint venture with three others. He alleged that under the arrangements then made a deed of trust and a note secured by such deed of trust were executed by Sarbacher and used as collateral for a certain loan made by the Thrift Credit Corporation, but Sarbacher's joint adventurers failed to do what they were supposed to do and, as a result, Sarbacher contacted one C. A. Hamby and arranged for a transfer of his equity position. Under a written contract Hamby had a right to exercise an option given to him and to

obtain all of the equity position of Sarbacher. *Sarbacher alleged that Hamby had exercised the option but had thereafter refused to return the collateral note and cancel the deed of trust as provided for in said written agreement.*

To this complaint the Trustees named in the deed of trust answered, alleging that they had no knowledge of the facts and neither admitted nor denied the allegations. The other defendants, C. A. Hamby and Hamby Industries, Inc., denied the jurisdiction of the Court, and said that the complaint failed to state a cause of action. The answer was filed by the two principal defendants on the 28th day of January, 1966.

Sarbacher filed his certificate of readiness seeking to place the case on the ready calendar for trial on April 4, 1966. In response to this attempt to put the case on the ready calendar, on May 12, 1966 the attorney for Hamby and Hamby Industries, Inc., filed a suggestion of bankruptcy of Hamby Industries, Inc. It was not until February 10, 1967 that the Trustee in Bankruptcy filed an amended answer and a counterclaim, in which counterclaim he sought foreclosure of the mortgage given. Sarbacher, on the 6th day of November, 1967, again filed a certificate of readiness which was opposed by the Trustee, and one of the grounds given for the opposition was the extensive discovery would have to be undertaken to adequately prepare for trial. The Trustee in Bankruptcy further asserted that the factual background of the case and the amount involved was substantial. On the 8th day of December, 1967 the Pretrial Examiner recommended that the opposition be sustained.

A companion case had long been pending in Texas. Practically all of the witnesses and documents necessary for the disposition of this cause were available in Texas, but not in the District of Columbia, except by deposition. The requirements of local

Rule 13 were waived by Order of the Court until the 2nd day of January, 1969, or until the Texas case had been tried, whichever occurred sooner.

In November of 1969 the cause was called, and Sarbacher was told to either place the case on the ready calendar or dismiss the same. The dismissal could not be entered because the pending foreclosure was being prevented by this suit, and the Court thereupon, on Order filed, placed the case on the ready calendar, but provided that it would not go on the daily assignment for trial before January 2, 1970.

Sarbacher was at that time living in California, and the witnesses were all living in Texas or elsewhere, but none were in the District of Columbia. Sarbacher came to the District of Columbia and reviewed the case for pretrial, and the pretrial statement dated February 10, 1970 was prepared by the parties and, under direction of the Pretrial Commissioner, and the sole issue was whether or not the option contained in the contract had been exercised.

At the pretrial the Trustee's attorney agreed that he would produce for use at the trial, if available, a copy of a suit brought in New York against the Thrift Credit Corporation, and would also produce certain releases and agreements of the original co-adventurers of Sarbacher, and their resignations as Directors and officers. The production was also requested of the records of the insurance companies showing the assumption of complete control by Hamby. It was also agreed that a deposition taken in Texas would be used as evidence in the District of Columbia cause; and the Pretrial Examiner ordered the case put on the daily assignment for trial on the day following the pretrial.

The case came on for trial, and the Court committed certain errors which are hereinafter set forth, and orally found for the Trustee

in Bankruptcy (Appellee). Sarbacher promptly filed a motion to set aside the findings of fact and to grant a new trial, and gave as his reasons that the finding of the Court that no election by Hamby had occurred was contrary to the evidence, that the Court's denial of the motion for the Appellant for additional time to present a witness from Texas on the basic issue was in error and an abuse of discretion. Additionally, Sarbacher, in order to make clear to the Court that the Court had made a mistake and that there had been an exercise of the option, presented the affidavit of James Clyde Straus, III, the affidavit of Carl Dungan, the affidavit of Ruth J. McGuire, the affidavit of Roy True, an attorney in Texas; and Dr. Sarbacher made his own affidavit explaining the difficulties he had encountered, and included in his affidavit a written doucment signed by Hamby confirming the exercise of the option. This document was also confirmed by Ruth J. McGuire, who also attached a copy of the memorandum signed by Hamby to her affidavit.

Reference had been made to the possibility of this document being available to the Court during the course of the trial when Sarbacher was asking for additional time within which to submit additional evidence in this, a non-jury case.

After the filing of the motion to set aside the findings of fact the Court, on the 23rd of March, 1970, signed the findings of fact and conclusions of law, and an Order for judgment; and on the 9th day of April, 1970 denied the motion to set aside the findings of fact and for a new trial, without hearing the same and without allowing Sarbacher's counsel to argue such motion.

From this action Sarbacher promptly appealed.

STATEMENT OF THE FACTS

Dr. Sarbacher was a doctor in scientific research and development (Tr. 4), and met one Brine Ryan and a man named Gilliland. As a result of what they told him Dr. Sarbacher entered into an agreement dated the 26th day of January, 1965, which agreement is in writing and a part of the record in this case (Tr. 4). Under the terms of said agreement Dr. Sarbacher was one of the four persons signing for the acquisition of the equity in the stock of four insurance companies (Pltf's. Exhibit No. 1). The stock was held as collateral for large loans, and that is what is meant by the equity position. In order to have sufficient collateral for the transaction and as front money, a promissory note was signed by all of the four adventurers, including Dr. Sarbacher, on January 26, 1965, said note being in the sum of . . . . $450,000.00. The note was secured by a deed of trust which was executed in March of 1965 by Dr. Sarbacher, and gave as security real estate in the District of Columbia—the private home of Dr. Sarbacher (Pltf's. Exhibits No. 2 and No. 3).

Additionally, Dr. Sarbacher had given a mortgage on another piece of property in Maryland, but the property in the District of Columbia was the item involved in the pending litigation.

The note was payable to Shelman and Prugh, who endorsed said note and delivered it to the Thrift Credit Corporation, a New York banking institution.

The co-adventurers failed to perform their obligations, and Dr. Sarbacher met one Hamby who was the owner of Hamby Industries, Inc., and the corporation was the alter-ego of the said Hamby. Hamby represented to Dr. Sarbacher—and Dr. Sarbacher believed him—that the financial situation was such that he could take over the insurance companies, and they entered into an agreement in

writing on the 14th day of August, 1965 under the terms of which Hamby received a fifty per cent interest in the equity position of Dr. Sarbacher and the right or option for the remaining fifty per cent for which Hamby was to return to Dr. Sarbacher his collateral which had been pledged to the Thrift Credit Corporation. Dr. Sarbacher testified that Hamby did exercise the option but did not return the collateral, although he used the money to the credit of the insurance companies to pay off the Thrift Credit Corporation, and the Thrift Credit Corporation assigned all of its right, title and interest in the note given by Sarbacher to Hamby and Hamby Industries, Inc. (Tr. 11 and 12; Pltf's. Exhibit No. 4).

At the time the note was given to Kaufman of the Thrift Credit Corporation, Kaufman understood and agreed that this was an accommodation presentation, and when Kaufman made the deal with Hamby to turn over the note secured by the deed of trust to Hamby (Tr. 15), Kaufman specifically said that he would not sell to Hamby except under the condition that Sarbacher's property—referring to the collateral—would be returned to Sarbacher; and Hamby agreed to this in the presence of Hamby's brother Paul, Mr. Kaufman and Dr. Sarbacher. In fact, the money used to pay the Thrift Credit Corporation came from the insurance company funds which Hamby had taken over (Tr. 16).

Although Hamby had gotten the note from the Thrift Credit Corporation and although he had exercised the option, he failed to turn the same over to Dr. Sarbacher, although he never denied that he would do this.

All of the prior parties had resigned from the insurance companies, Hamby had taken the same (Tr. 29-31), and Sarbacher's note had been delivered to Hamby; but one of Hamby's other companies went bankrupt, and as a result Hamby Industries, Inc. was involved, and the Trustee in Bankruptcy took over.

The deposition of one John Mark, whose said testimony had been taken in Texas in the Texas case, was read. He testified that Mr. Hamby had told him that he was getting all the collateral back for Dr. Sarbacher (Tr. 34-36).

After the noon recess of the trial Dr. Sarbacher was returned to the witness stand and testified that since the noon recess he had remembered that there *was* a written memorandum from Hamby with reference to the fact that he had elected to exercise the option, and the following occurred (pages 42 and 43 of the transcript):

> "THE COURT: What you are trying to do, reopen the case?
>
> "MR. FRIEDLANDER: The nature of that, yes, sir. We have discovered during the noon recess, I thought we'd be interested in finding out what the facts were.
>
> "THE COURT: You mean after five years, you discover in the noon recess that you have a writing that exercises the option?
>
> "MR. FRIEDLANDER: No, we have a memorandum; I wanted the Doctor to describe it because I've never seen it."
>
> * * *
>
> "MR. FRIEDLANDER: I've never seen it; I want him to describe it. He says he knows where it is."
>
> * * *
>
> "THE COURT: Well, I'll rule on it when you get it and we see it."

The Trustee in Bankruptcy then took the stand and testified over objection (Tr. 50) to the contents of letters and minutes which were not in court, and as to the contents of doucments which were in his possession but which he had not produced in court. His hearsay evidence and his conclusions were accepted by the Court, including what he claimed was the background of Dr. Sarbacher, and Dr.

Sarbacher's participation in board meetings. All of this testimony was from records which the Trustee in Bankruptcy claimed he had read but which he did not produce; that he had looked at these records over a year before, but he could not recall as to whether the records showed anything on the insurance companies; and he was asked the following (pages 59 and 60 of the transcript):

> "Q. You note on that paper that Hamby's Industries has asserted that it has a hundred percent ownership of three of those insurance companies?
>
> "A. Well, that's what this paper says, yes.
>
> "Q. Now where are the records of Hamby Industries and where can we see those records?
>
> "A. They are in my possession.
>
> "Q. Are they here in the courtroom?
>
> "A. No, sir."
>
> * * *
>
> "Q. Did the Hamby Industries' general journal reflect its assets from month to month?
>
> "A. I don't remember."

His testimony on page 62 of the transcript also included:

> "Q. Do you have the minute book?
>
> "A. Yes, sir.
>
> "Q. Is it here?
>
> "A. No, sir."
>
> * * *
>
> "Q. Was there any reason why they weren't brought here?
>
> "A. Well, these records are all voluminous. I came up . . .
>
> "Q. How voluminous were the minutes of August '65 of Hamby Industries?

"THE COURT: Well, was he asked, was there any demand made under our discovery rules that the minutes be furnished?

* * *

"MR. FRIEDLANDER: Your Honor will see further stipulations under the pretrial statement."

And then occurred a conversation between the Court and counsel which made it abundantly clear that the Court did not have before it information sufficient to justify a ruling, unless it adopted the hear-say evidence of the Trustee and ignored the fact that the Trustee had not produced his records. At that point the Court was told as follows (pages 65 through 69 of the transcript):

"MR. FRIEDLANDER: I've only got—they sent single sheets of these two letters. I would say to your Honor, this, I think on the issue, and I'm going to move the Court at this time to allow us time to do three things: (1) to get evidence to prove Plaintiff's Exhibit Five which is the financial statement showing a hundred percent ownership in the life insurance companies; (2) to obtain these records in Texas of the insurance companies' minutes, and also I say to your Honor that I spoke to the attorney, Mr. Roy True, down in Texas at noon time and I represent to the Court that if the Court will give me time, I will produce Mr. True as a witness for the following facts; that Charles Moore, an employee, an officer at that time of Hamby Industries, in response to the claim of a law office for return of these securities, this security note, advised Mr. True that the option had been exercised and that he was going to as soon as possible make available the documents to complete the transaction. Now I spoke to Mr. True on the phone; he told me this. I would also like to make certain that Charles Moore is available to the Court.

"Now the Court will say, 'You've had plenty of time to prepare this case' . . .

"THE COURT: You anticipate me perfectly, Mr. Friedlander.

"MR. FRIEDLANDER: Yeah, well let me explain to the Court. We are dealing with a very substantial amount. Up to and including, I'd say November, or whatever date the record would show the case was called by the Court, I was definitely under the impression that the case would not be tried in Washington it was being prepared in Texas. On that date, I was required to either put it on the ready calendar, or to dismiss it. So I put it on the ready calendar; . . . I was told at that time the case would be up pretty quickly; it didn't come up as quickly as was anticipated. I thought that when I made the arrangements at pretrial that these documents would be produced. I say to the Court that I am satisfied that this case needs additional testimony in the form of the bank which received the statement—the financial statement from Hamby Industries because from this document, and I have photostated it, the Court will see a representation of how much of the insurance comapnies' stock they owned which meant that there had been the exercise of the option otherwise they wouldn't own a hundred percent of the stock, and that's the value of this document. And secondly, we know—I know from what Mr. Roy True has told me that he was told by Mr. Moore, an employee of Hamby Industries, and the executive vice president, I understand, that the exercise of the option had taken place. That is the sole issue in the case. We—and also I am advised now, and was not thought of before, is that there is available in the —in California an envelope which contains a written memorandum from Mr. Hamby. Now it will be necessary in order to have

that memorandum used, to have Hamby either confirm his writing, or have Dr. Sarbacher confirm it, if he can. Now this will prove the exercise of the option which is, in my opinion, the sole question of the case.

"THE COURT: Mr. Friedlander, this case would have had to have been prepared whether you tried it in Texas or whether you tried it here.

"MR. FRIEDLANDER: Not by me, though.

"THE COURT: You'd need the same preparation. This case was filed December 22nd, 1965. It laid in the files. Last September, I got to messing with the files and I found out we had an awful lot of old cases that counsel had been dilatory in and had not filed a certificate of readiness. We had all those old cases set before the various active Judges sitting in civil and yours happen to come before Judge Sirica, but I think we all did the same, we gave you the opportunity to either file a certificate of readiness or to dismiss the case. You filed a certificate of readiness. The case then—then you made no motion for further discovery or anything of the sort. You asked for no additional discovery of any kind and you came in here to try this case, and we are going to try it and any evidence that you can get between adjourning in the afternoon and starting in the morning, you're welcome to bring in; or if we go over the weekend, any you can get over the weekend, you're welcome to bring in. But I'm not going to continue this case to get any evidence.

"MR. FRIEDLANDER: Well, would your Honor allow us tomorrow morning to bring in Mr. Roy True?

"THE COURT: Bring in who?

"MR. FRIEDLANDER: The lawyer from Texas, he can fly in.

"THE COURT: What's he going to say?

"MR. FRIEDLANDER: That he, acting on behalf of Mr. Sarbacher, was at that time working for a law firm which was representing Dr. Sarbacher, had made demand upon the Hamby Industries for this note and collateral and that in result of his application or demand, Mr. Moore came to his office and told him that the option had been exercised by Hamby and that he would . . .

"THE COURT: Mr. who?

"MR. FRIEDLANDER: His name is Roy True; he's a lawyer in Texas.

"THE COURT: Who came in and said it had been exercised?

"MR. FRIEDLANDER: A Mr. Charles Moore.

"THE COURT: Who's he?

"MR. FRIEDLANDER: He was the executive vice president of Hamby Industries; he's the gentleman that was in that company until a period when he quit. At that time, I think he quit immediately before the Trustee took over.

"THE COURT: You've closed your case and I'm not going to permit it to be reopened."

It developed that Hamby had gone to the penitentiary for mail fraud, and after the conclusion of the testimony the Court made its findings of fact from the bench, and the proceedings occurred as indicated in the prior Statement of the Case herein.

ARGUMENT

I

The Findings of Fact on the Counterclaim and on the Original Case Was Predicated on Evidence Which Was Inadmissible, and the Disregarding of the Testimony of the Appellant, Sarbacher, Without Reason, Was Error

The Court will see from the record in this case that the only witness to testify as to facts was the Appellant, Sarbacher, and the testimony produced from the deposition of a witness in Texas.

Sarbacher had testified that he had signed the note which was the basis of the counterclaim, and that by the terms of a contract made August 14, 1965 (Pltf's. Exhibit No. 4) he had given up half his equity position and had given an option to Hamby to acquire the other half in return for a return to him of his promissory note (Pltf's. Exhibit No. 2) and the mortgage securing said note (Pltf's. Exhibit No. 3). He testified that Hamby had exercised the option, had obtained a one hundred per cent equity position, had taken over the insurance companies, and had acquired the promissory note from the Thrift Credit Corporation, but had never returned the collateral to him, Sarbacher. That the payments to the Thrift Credit Corporation by Hamby were from funds of the insurance companies.

Against this testimony, which was supported by the testimony in the deposition of John Mark, the Appellee offered only the Trustee in Bankruptcy's testimony, who had no personal knowledge of the affairs but who claimed to have investigated and claimed to have read certain documents, and he testified from memory to what he claimed was the information contained in the documents. Objection of course was made to this type of testimony, but the Court allowed it. For Example (Tr. 55), he testified that he had looked over the min-

utes a year before the trial, and that (Tr. 59) he did not recall what the records of Hamby Industries showed insofar as the insurance companies were concerned. The witness was shown a paper which purported to be a statement of the assets of Hamby Industries, Inc., which showed a one hundred per cent ownership of the three insurance companies. He admitted that the paper said that, and admitted that the records of Hamby Industries were in his possession, but he did not have them in the courtroom, and that his reason for not having the records were that they were quite voluminous (Tr. 60). He further testified that he did not remember whether the Hamby Industries general journal reflected its assets from month to month. He could not remember whether or not there were resignations of Ryan and Gilliland (Tr. 61), and he could not remember whether the minutes reflected Ryan and Brine as Directors (Tr. 61). Again (Tr. 62), this sole witness for the Appellee, in referring to the minute book, stated that it was not in the courtroom and the reason that it was not brought to court was that the records were voluminous. The Court at this point, as the transcript shows, interrupted to inquire whether or not there was any demand made under the discovery rules that the minutes be furnished, and the attention of the Court was called to the stipulations under the Pretrial Statement; but nothing much came from that because everything got involved, and at this point the attempt by Sarbacher to obtain additional time to bring in clear contradiction of the hear-say testimony was adversely ruled upon by the Court.–(*Travers v. Smolik*, 43 App. D.C. 150).

The Appellant is mindful of the ruling of this Court in Appeal No. 20,444 [*Candis O. Ray*, Appellant *v. Ruth G. Graze*, Appellee; September Term, 1966], where there was a judgment dated February 16, 1967, in which this Court refused to reverse the lower court

after the lower court had admitted hear-say evidence. Even if hear-say evidence is admissible in non-jury cases, it was still incumbent upon the trial Court not to predicate its decision on such hear-say evidence.

II

The Court Erred in Holding as a Matter of Law That the Appellee Palmer as Trustee in Bankruptcy Was Clothed With All the Rights of a Holder in Due Course as to the Note Involved in This Case

The note involved herein was made on the 26th day of January, 1965. It was in the sum of $450,000.00. It was payable $50,000.00 within fourteen days from date. An additional $150,000.00 was payable one hundred and twenty days after the date of the note, and $50,000.00 additional was payable two hundred and ten days from the date of the note; and thereafter the note was payable at $2,500.00 per month, with the entire principal balance and interest due and payable on January 26, 1967. The makers of said note made no payments on account thereof (see Counterclaim filed by the Trustee).

The Court was completely in error in assuming or deciding that the Appellee was a holder in due course: (a) He was not a bona fide holder of a negotiable instrument for valuable consideration; (b) he had notice of the facts which imparied the validity of the note; (c) he took after the maturity of the note (here, the note had become due before the Trustee became the owner); and (d) also, Hamby took with notice of the infirmities of the note as he was told of the same and was also told that he could not buy the note unless he agreed to surrender it to Sarbacher. This delivery to Sarbacher was insisted upon by Kaufman of the Thrift Credit Cor-

poration because Kaufman had originally made that arrangement with Sarbacher, and Hamby agreed to this and stated that he intended to and would return the note to Sarbacher; and it was after this promise that the Thrift Credit Corporation delivered the note to Hamby (Tr. 15) (see District of Columbia Code, Section 28:3-302).

III

The Court Erred in Refusing to Allow Time for Sarbacher to Produce Further Testimony in This, A Non-Jury Case, Particularly Where the Trustee in Bankruptcy Had Testified That, Although He Had Testified That, Although He Had Documents In His Possession, He Had Not Brought Them to the District of Columbia, and He Was Allowed to Testify as to the Contents of These Missing Documents

We have fully described in the Statement of Facts what occurred in the courtroom in relation to this matter, and have given the excerpts from the transcript, and it clearly is shown that Sarbacher had testified to the exercise of the option by Hamby, the promises of Hamby to return the collateral—or, as he calls it, "property"—and that the Trustee in Bankruptcy had testified to hear-say, and he had failed to produce the documents so his testimony could be checked. At this point it was incumbent upon the Court in an exercise of judicial discretion to either continue the case or delay the proceedings in order that the truth of the matter be established.

Now the granting or refusing of a continuance is ordinarily within the discretion of the trial court, and it has often been said that it will not be disturbed except in cases of plain abuse.—*J. E. Hanger, Inc. v. U.S.*, 81 U.S.App.D.C. 408, 160 Fed. 2d 8.

But, in *Cornwell v. Cornwell*, 73 App.D.C. 233, 118 Fed. 2d 396, this Court said:

> "Although the granting of a continuance or of motions for vacations of judgment and for new trial are addressed to the discretion of the trial court, that discretion must be *exercised in the interests of justice* . . . ." (emphasis supplied)

In *Harrah et al v. Morganthau, Secretary of the Treasurery et al*, 67 App.D.C. 119, 89 Fed. 2d 863, it was held that under the circumstances of that case the refusal to grant a continuance was reversible error. The facts of that case are different from ours, but the end result is the same.

It has been often been said that a motion for continuance is addressed to the Court's discretion, and its denial of such a motion for continuance will be upheld unless the application satisfies certain requirements which have been established either by judicial precedent or by statute. The basis for the rule is to guard against bad faith and unwarranted delays. The circumstances in the case at bar were that there had been no real contest about the fact that the option had been exercised. It was obvious that no issue of fact really existed as to the exercise of the option. It was only when the Court allowed the hear-say testimony of the Trustee who had no personal knowledge of the facts and who was asserting that he had read the records a year ago and was telling the Court what was in them—and the Court was listening—only then did it become apparent that the case was being tried in a very odd way, and it was at that time that contact was made with the Texas lawyer who promised to appear the following day to testify as is indicated in the record, and it was only then that Sarbacher remembered that in California there was a document in writing signed by Hamby which proved beyond any doubt that the option had been exer-

cised. Under these circumstances, for the Court to take the position that the facts were not as important as immediate disposition of the case, was an abuse of discretion.

It should be noted that on two occasions Sarbacher had attempted to put the case on the ready calendar for trial, and on both occasions his efforts had been rejected. Nothing had been done by the Trustee in Bankruptcy during all this period, and suddenly it seems to be Sarbacher's fault that for five years nothing was done. The Court could not have been surprised that after a delay of five years things could be forgotten, even though important. How often must a plaintiff seek to put a case on the ready calendar in order to avoid the stigma of delaying the cause?

IV

The Court Abused Its Discretion in Denying the Motion for a New Trial

The Court had announced its decision, totally predicated on the hear-say evidence of the Trustee in Bankruptcy, and on the inferences the Court sought to draw that Sarbacher, being a scientist, was required to be knowledgeable in business affairs, and because his name had been used in certain organizations as "President"—that because of this Sarbacher was knowledgeable concerning corporate matters.

Even knowledgeable persons are often disarmed and cheated by persons like Hamby, a now convicted felon for mail fraud.

A motion for a new trial was promptly filed, and to support this motion Sarbacher presented, not only a photocopy of the document which he said he remembered, but affidavits of many persons, all showing the Court that the option had been exercised, and each one stating that he or she would appear and testify. From reading

the affidavits and looking at the document there can be no doubt but that the decision of the Court was incorrect on the facts, and that the option had been exercised. The motion for new trial was opposed by counsel for the Trustee on the grounds that this was not newly discovered evidence, and therefore should not be considered by the Court.

It has been said—and the courts are at one on this—that the trial court has not only the right and the power in its discretion to grant a new trial in the interests of justice, but has the duty to do so when the ends of justice have not been served. This does not mean that a person can refuse to put on known witnesses, and then after he has lost, seek to cover up his error in judgment by then seeking to have a new trial and to set forth the names of the witnesses and the testimony they would give; but it does mean in our case that, where the Court has been alerted to the existence of the witness in Texas who could have been there the next day, and the existence of a written instrument in California which was there for safekeeping, the least the Court could have done was to have allowed a short period in order to bring in the witness and the doucment.

It has always been held that the granting or denying of a new trial is discretionary with the trial judge, and his ruling cannot be relied upon as a ground of reversal, *unless an abuse of discretion is shown.* There are many cases supporting this, including: *Washington Times Co. v. Bonner,* 66 App.D.C. 280, 86 Fed. 2d 836.

More on point and closer to our problem is the case of *Wilson v. Beckett et al,* 79 U.S.App.D.C. 94, 143 Fed. 2d 19, in which the Court said:

> "On the other hand, a judge is no mere umpire. 'It is the recognized function of a trial judge to see that the facts are clearly and fully developed.' He necessarily has a wide discretion in the matter."

Although in the above cited case this Court did not disturb the ruling because it felt there was no abuse of discretion, in our case it should be different, because here there was a clear miscarriage of justice under circumstances which were unusual, and Sarbacher's actions were not negligent, because he could not presume that the Court would allow someone who knew nothing about the facts testify to the facts.

The Supreme Court of Appeals in Virginia, in *Fedek v. National Liberty Insurance Co.*, 184 Va. 528, 35 S.E. 2d 766, laid down as a doctrine of law that a plain deviation from right and justice justifies the trial court in setting a jury verdict aside, and that that decision must be measured by the conscience of the court within fair limits; and in so ruling the Court cited *Meade v. Saunders*, 151 Va. 636, 144 S.E. 711, where the Court decided that a verdict in plain deviation from right and justice should be set aside.

CONCLUSION

The decision of the trial Court has made possible the foreclosure of a man's home due to the conduct of a convicted felon, and in the face of clear facts now established. The Court's position was clearly indicated during the course of the trial that he would not reopen the Appellant's case, and that he would not even allow a day's delay in a case which had been pending for five years. He apparently blamed the delay on Sarbacher who had on two occasions sought to put the case on the ready calendar and each time was frustrated. The frustration was occasioned by the representation by the Trustee in Bankruptcy that there was a large sum involved and a very complicated set of facts and many depositions had to be taken. The said Trustee did not take the depositions, never made any attempt to put the case on the calendar, and Sarbacher waited. Suddenly one of the trial Judges decided that

all old cases should be tried, to which doctrine we subscribe; but we do not believe that in trying these old cases the rights of the parties should be lost because of the delay, and that after five years a person should remember the facts as well as he did previously; and we do not think that the harsh justice meted out in this case should be unreversed.

Respectfully submitted,

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IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,311

ROBERT I. SARBACHER,

Appellant,

Dexter M. Kohn, et al.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEES

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*Fidelity & Deposit Company v. L. Buchi & Son, 189 U.S. 135, 47 L.Ed. 744, 23 S.Ct. 582 (1903) 21

*Harrah v. Morgenthau, 67 App. D.C. 119, 89 F.2d 863 (1937) 20, 21

*Isard v. Appelstein (D.C. Mun, App. 1958) 144 A.2d 925 18

*Kelberine v. Societe Internationale, Etc., 124 U.S. App. D.C. 257, 363 F.2d 989 (1966); cert. den. 385 U.S. 989, 17 L.Ed. 2d 450, 87 S.Ct. 595 (1966); reh. den. 383 U.S. 1044, 17 L.Ed. 2d 688, 87 S.Ct. 770 (1967) 21

*Lewis v. Kepple (W.D. Pa., 1960) 185 F. Supp. 884 . . . . . 24, 25

Lloyd v. Gill (5th Cir., 1969) 406 F.2d 585 . . . . . 25, 26

*Manzon v. Greenwald (D.C. Mun. App. 1958) 145 A.2d 575 18

Royal Air Properties, Inc. v. Smith (9th Cir. 1964) 333 F.2d 568 25

*Sechrist v. Bryant, 52 App. D.C. 286, 286 F. 456 (1923) 21

Securities Exchange Commission v. Glass Marine Industries, Inc. (D.C. Dela. 1962) 208 F. Supp. 727 25

Stiers v. Martin (4th Cir., 1960) 277 F.2d 737 24

Thomas v. United States, 74 App. D.C. 167, 121 F.2d 905 (1941) 21

Wilson v. Beckett, 79 App. D.C. 94, 143 F.2d 19 (1944) 26-28

Other Authorities:

Uniform Commercial Code, Title 3, (District of Columbia Code, Title 28:3) 12, 19

6A Moore, *Federal Practice* (2d Ed., 1966) §5908 23

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APPEAL FROM THE UNITED STATES DISTRICT COURT
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BRIEF FOR APPELLEES

ISSUES PRESENTED FOR REVIEW

1. Where the admitted maker of a promissory note secured by a deed of trust challenges his liability thereunder by asserting a defense based solely on his own testimony corroborated only by hearsay testimony and otherwise inadmissible evidence, is it error for the court as trier of fact to disregard that testimony?

2. Where, after the expiration of five years from the filing of suit by a party in a forum of that party's choosing, the party only "remembers" a document in his possession from the outset, then termed "crucial" to the proof of his case, on the day of trial and after the close of his case, is it error on the part of the court (a) to refuse to continue the trial to allow the party to secure the same; (b) to deny a motion by the party to reopen his case in order to introduce the document?

3. Where, in the circumstances above-described, an alleged witness described as "crucial" by the party, is first contacted by the party on the day of trial and subsequent to the close of his case, is it error on the part of the court to deny a motion by the party to continue the case in order to bring such witness before the court?

4. Where, in the circumstances above-described, the party moves the court to set aside its findings of fact and conclusions of law and grant a new trial on the basis of newly discovered evidence, which evidence has, in fact, been in his possession and control during the entire five-year pendency of the suit, does the denial of said motion constitute an abuse of discretion on the part of the trial court?

COUNTERSTATEMENT OF THE CASE

STATEMENT OF FACTS

On January 26, 1965, Dr. Robert I. Sarbacher, plaintiff below (hereinafter "Sarbacher") together with others not parties hereto, as "Buyers", entered into an agreement with Floyd L. Shelman and Byron E. Prugh as "Sellers", for the purchase of certain shares of stock in four insurance companies. (Pltf's Ex. 1).

As part of the consideration for said purchase, Sarbacher and the others agreed, in paragraph 2 of the Agreement, to "execute to

the Sellers a promissory note in the amount of $450,000.00 . . ." (Pltf's Ex. 2).

Further under the terms of the Agreement, Sarbacher agreed, *inter alia*, that

> "Buyer Robert I. Sarbacher shall execute a deed on property known as 2503 Tracy Place, N.W., Washington, D.C., subject to encumbrances of record which will not exceed $46,000.00 to Thrift Credit Corporation, a New York corporation, which Thrift Credit will hold said deed as Trustee for Sellers as security for note until such time as $50,000.00 has been paid on said note, at which time said Trustee shall deed said property back to Robert I. Sarbacher."

Thereafter, on March 13, 1965, Sarbacher executed a certain deed on the Tracy Place property (Pltf's Ex. 3) to secure payment of the $450,000.00 note to Thrift Credit Corporation, the new holder of the note, in accordance with the Agreement of January 26, 1965.

On August 14, 1965, when the note was in default, Sarbacher entered into an Agreement with one C.A. Hamby (Pltf's Ex. 4) which recited that Sarbacher's "equity position" in the four insurance companies was then in jeopardy by virtue of default in payment on the note. Said Agreement further recited C. A. Hamby's willingness to attempt to secure Sarbacher's "equity position", in return for the latter's assigning all his rights therein to C. A. Hamby; obtaining releases from each of his co-purchasers under the Agreement of January 26, 1965 and assigning same to C. A. Hamby; securing resignation of all board members and officers of the four insurance companies and replacing them with designates of C. A. Hamby; and assigning a fifty percent interest in his "equity position" to C. A. Hamby. The Agreement also contains an "Option" whereby C. A. Hamby might secure the remaining fifty percent of Sarbacher's "equity

position" by effecting the return to Sarbacher of the collateral pledged to Thrift Credit Corporation (i.e., the $450,000.00 note of January 26, 1965 and the underlying security therefore, including, *inter alia*, the deed of trust on Sarbacher's Tracy Place property).

Pursuant to this Agreement, Thrift Credit Corporation negotiated, without recourse, all its right, title and interest in the $450,000.00 note and the underlying securities to the order of "C. A. Hamby and Hamby Industries, Inc."

On December 22, 1965, Sarbacher filed the Complaint herein to set aside the deed of trust and cancel the $450,000.00 promissory note, alleging that C. A. Hamby had exercised the option above referred to but had refused to return the collateral note and cancel the deed of trust.

Separate Answers to this Complaint were filed by the Trustees named in the Deed of Trust and by C. A. Hamby and Hamby Industries, Inc.

Sarbacher filed a Certificate of Readiness on April 4, 1966. On April 12, 1966, Universal Credit Cards, Inc., was adjudicated as bankrupt under the provisions of the Bankruptcy Act in proceedings styled IN THE MATTER OF UNIVERSAL CREDIT CARDS, INC. NO. BK 3-572, IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION, and that Court entered an Order adjudging and declaring Hamby Industries, Inc., to be the "alter ego and subsidiary and adjunct and agent" of the bankrupt corporation, directing the Trustee in Bankruptcy of the Estate of Universal Credit Cards, Inc., the Honorable Philip I. Palmer, Jr., intervening defendant below (hereinafter "Palmer") to take over the assets of Hamby Industries, Inc., including any and all causes of action held by Hamby Industries, Inc., and to administer such corporation, its affairs and its property as part of the estate of

Universal Credit Cards, Inc. (Deft's Ex. 3C). On May 6, 1966, an Order was entered approving the appointment of Palmer as operating Trustee (Deft's Ex. 3A).

Accordingly, on May 12, 1966, the then-attorney for C.A. Hamby and Hamby Industries, Inc., filed a Suggestion of Bankruptcy of Hamby Industries, Inc.

On May 16, 1966, an Order was entered in the United States District Court for the Northern District of Texas approving Palmer's bond (Deft's Ex. 3B).

Shortly thereafter, the $450,000.00 note came into Palmer's possession. On December 30, 1966, Palmer sought leave to intervene in the instant action, to be substituted as party defendant in the place of Hamby Industries, Inc., and to file on behalf of Hamby Industries, Inc., an Amended Answer and Counterclaim.

On January 5, 1967, Sarbacher filed Points and Authorities in Opposition to Palmer's Motion, alleging, *inter alia*, that the Counterclaim should be tried in Texas rather than in the District of Columbia. The Motion to Intervene, together with a Motion for Summary Judgment which had been filed on Sarbacher's behalf on April 29, 1966, were heard in due course and on February 8, 1967, an Order was entered granting Palmer leave to intervene, etc., directing notation of withdrawal of Sarbacher's Motion for Summary Judgment and extending the time for Sarbacher to answer Palmer's Counterclaim.

On February 16, 1967, Sarbacher filed his Answer to the Counterclaim. On September 26, 1967, Palmer noticed Sarbacher's deposition for October 12, 1967. On September 28, Sarbacher moved to strike the Notice of Deposition or continue the deposition, alleging a conflict in Sarbacher's counsel's calendar, which Motion was granted. On November 6, 1967, Sarbacher again filed a Certifi-

cate of Readiness which was opposed by Palmer on the grounds that further discovery was necessary in order adequately to prepare the case for trial. On December 8, 1967, Palmer's Opposition to the Certificate of Readiness was sustained.

On March 1, 1968, Palmer again noticed Sarbacher's deposition and on March 4, 1968, Sarbacher moved to strike the notice on the ground of non-residence. The Motion to Strike was opposed by Palmer; hearing was set for April 4, 1968, and the Motion was denied. Sarbacher's deposition was again noticed by Palmer on May 22, 1968, and again opposed, Sarbacher moving simultaneously to waive the requirements of Rule 13 and to continue the case pending the disposition of a related case in Texas.

On June 14, 1968, the court, per Curran, C. J., granted Sarbacher's Motion "pending the disposition of the companion case in Texas . . . *or* until the 2nd day of January, 1969, *whichever is sooner* . . ." On November 5, 1969, the case was called before Sirica, J., and the case placed on the Ready Calendar. Pretrial was had on February 10, 1970.

PROCEEDINGS BELOW

The case was called for trial on March 11, 1970, before the Honorable George L. Hart, Jr. The execution by Sarbacher of the Agreement of January 26, 1965, the promissory note of even date in the amount of $450,000.00, the Deed of Trust of March 13, 1965, securing same and the Agreement of August 14, 1965, with C. A. Hamby were established upon direct examination of Dr. Sarbacher. In addition, there was testimony by Sarbacher that C. A. Hamby "said that he *would* exercise the option . . . *soon*" (Tr. 13-14), that C. A. Hamby advised Sarbacher that he had exercised the option (Tr. 14) and that "he *intended to and would* . . ." exercise the option (Tr. 15).

To establish the alleged exercise of the option, Sarbacher offered a document which was described as "the unsigned Affidavit of Hamby . . ." (Tr. 18). The document was objected to by counsel for Palmer at this juncture (as at Pretrail), and the Court refused to allow it to be admitted.

Sarbacher's counsel also offered the deposition of one John Mark, the effect of which was to establish, if Mark's testimony was believed, that C. A. Hamby had told him (Mark)—"approximately"—that Sarbacher was "*going to* get his property back" and that they were "*going to* have these companies on a good solid business foundation"—or "words to this effect" (Tr. 35). This testimony was admitted by the Court over the objection of counsel for Palmer. Further testimony from the deposition in which Mr. Mark alleged that *Paul* Hamby (C. A. Hamby's brother) told him (Mark) that Sarbacher *would* get his property back was also admitted over the objection of counsel for Palmer (Tr. 36).

Cross-examination of Sarbacher by counsel for Palmer established Sarbacher's experience in dealing with property and in business dealings generally (Tr. 19-20) and his awareness of the nature of the instruments he signed (Tr. 20, 22-23, 29-30). With the evidence in this posture, Sarbacher closed his case and counsel for Palmer moved for a trial finding against the plaintiff and in favor of the defendant Palmer on the counterclaim which was denied "for the time being" the court being of opinion that there had been, as yet, no evidence presented directly on the counterclaim (Tr. 37).

Direct examination of Sarbacher by counsel for defendant Palmer further established Sarbacher's extensive business and financial experience (Tr. 38-39, 41, Deft's Ex. 2). On cross-examination, counsel for Sarbacher attempted to introduce a purported "Statement of Financial Position of Hamby Industries" as of August 23, 1965,

which, it was claimed, showed that at that time, Hamby Industries claimed a 100% ownership in the four insurance companies. Counsel for defendant Palmer objected on the grounds that the proffer was outside the scope of direct, and the proffered instrument was withdrawn. At this juncture, counsel for Sarbacher asked the witness:

> "Doctor, do you now recall *since lunchtime* whether there was any written memorandum made by Hamby to you in reference to the fact that he had elected to exercise the option? (Tr. 42, emphasis added.)

Objection was again made by counsel for Palmer on the ground that the question was outside the scope of direct, the Court inquiring of Sarbacher's counsel "What are you trying to do, reopen your case?" (Tr. 42). When counsel answered in the affirmative, the Court indicated that " . . . I'll rule on it when you get it and we can see it." (Tr. 43).

Defendant Palmer then took the stand and established his status as Trustee in Bankruptcy for Hamby Industries, Inc. (Tr. 44, Deft's Ex. 3A, B and C); the manner in which he, as Trustee, came into possession of the original $450,000.00 promissory note of January 25, 1965 (Tr. 45-46); his status as assignee of all of C.A. Hamby's individual interest in the various loan agreements, promissory notes, deeds of trust, etc., and all claims or causes of action against Sarbacher arising therefrom (Tr. 48-49). Palmer further testified to certain background information which he had acquired in the course of his investigation as Trustee for Hamby Industries, Inc., including information with respect to the extent of Sarbacher's activities in connection with the insurance companies (Tr. 52-54).

Upon cross-examination, Palmer testified that it had been over a year since he last looked at the reports but was unequivocal in testifying that Hamby Industries never had 100% ownership of any of the four insurance companies (Tr. 56-58) and that he had read the

entire minute book of Hamby Industries, Inc. (Tr. 62). A colloquy between counsel and the Court showed that the materials requested at pretrial by Sarbacher (i.e., the August minutes of the four insurance companies) had, to the extent they were available to Palmer, been supplied (Tr. 64).

Counsel for Sarbacher then renewed his motion to continue the case (Tr. 65-69, Appellant's Br. 10-13), which motion was again denied by the Court.

The Court entered judgment in favor of the defendant Palmer and against plaintiff Sarbacher upon oral findings of fact and conclusions of law. Written Findings of Fact and Conclusions of Law were prepared at the Court's direction by counsel for defendant Palmer and were largely adopted by the Court on March 23, 1970. Sarbacher's Motion to Set Aside the Court's Findings and Conclusions and Grant a New Trial and a subsequent Motion to Amend "to Include Newly Discovered Document" were denied by the Court on April 9, 1970. From the Findings, Conclusions and Judgment of the trial court, plaintiff Sarbacher noticed this appeal on April 14, 1970.

SUMMARY OF ARGUMENT

I. The trial court's findings were not predicated on hearsay testimony or otherwise inadmissible evidence by Palmer, but rather on Sarbacher's total failure to prove his defense to liability as required. The genuineness of the note and the other instruments having been admitted by Sarbacher, mere production of the instrument entitled Palmer to recover thereon, unless Sarbacher was able to establish by a preponderance of the total evidence, the exercise by C. A. Hamby of the option in the Agreement of August 14, 1965. There was only the sharply contradicted testimony of Sarbacher himself on this point, entirely uncorroborated by any competent evidence. This being the case, the Court below as trier of fact was compelled to find as it did

and would, indeed, have been entirely justified in granting Palmer's motion for a trial finding in his favor at the close of Sarbacher's case.

II. Appellant's argument fails because it is directed entirely to asserting that Palmer was not himself a holder in due course. But the Court did not find him to be so, holding merely that he was "clothed with all the rights of a holder in due course," an entirely different thing. Moreover, even that finding is not essential to Palmer's recovery under the Uniform Commercial Code which provides in terms that until a defense is shown and established by a preponderance of the total evidence, the issue as to whether the holder is a holder in due course does not arise; the holder is entitled to recover whether a holder in due course or not.

III. The granting or denial of a motion for continuance is entirely within the discretion of the trial court and is unreviewable absent a clear abuse of that discretion. The lower Court's denial of Sarbacher's motion to continue the case to enable him to produce a witness described as "crucial" on an issue at all times known to him to be fundamental to his case, which witness was never contacted by him at all during the five-year pendency of this cause until the luncheon break on the day of trial and after the close of his case, cannot be deemed an abuse of discretion and the cases cited by appellant rebut rather than support his contention that it was.

IV. The trial Court's denial of Sarbacher's motion for a new trial was compelled by the authorities and the Federal Rules of Civil Procedure. The evidence termed "newly discovered" was not so within the rubric of Rule 59 which requires that such evidence be undiscover*able*" prior to trial. Since the evidence proffered was at all times in the exclusive possession of Sarbacher and subject to his control, he could not be heard to say that he had exercised the due diligence to discover the same prior to trial which the rules so clearly require.

ARGUMENT

I

THE TRIAL COURT'S FINDINGS WERE NOT PREDICATED ON INADMISSIBLE EVIDENCE AND THE TRIAL COURT'S DISBELIEF OF SARBACHER'S TESTIMONY WAS NOT ERROR.

It cannot be gainsaid that Sarbacher testified that the option in the Agreement of August 14, 1965, had been exercised by C. A. Hamby. Otherwise, he would have had no ground upon which to assert a defense to the note and deed of trust. What appellant's Brief overlooks is that Sarbacher's testimony was entirely uncorroborated, entirely without support in the evidence before the Court, and sharply contradicted by Palmer.

The testimony of John Mark consisted of hearsay statements as to what C. A. Hamby allegedly told Mark he *intended* to do at a future time and as to what *Paul* Hamby, C. A. Hamby's brother, said C. A. Hamby *had* done. This is as good as no corroboration at all. The only documentary evidence which appellant sought to have admitted in support of his position consisted of two unauthenticated and unsigned copies of documents, the originals of which were not produced, to the introduction of which appellee's counsel objected, and the introduction of which the Court correctly refused to allow.

Appellant avoids altogether the precise point of law which is fundamental to his case, i.e., that a party seeking to challenge his liability on an admittedly genuine note has the burden of proving his defense. In the instant case, Palmer presented a prima facie case on the counterclaim with the introduction into evidence—by Sarbacher, incidentally—of the Agreement of January 26, 1965, the $450,000.00 promissory note and the deed of trust on Sarbacher's Tracy Place property of March 13, 1965. That Sarbacher had in fact exe-

cuted the instruments, that he did so voluntarily, that he was in full possession of his faculties at the time and understood what he was doing, was established beyond question in the trial court.

The question of whether an exercise by C. A. Hamby, individually, of the "option" in the Agreement of August 14, 1965, could have relieved Sarbacher of liability on the note and deed of trust, a question which Palmer answered in the negative in his Trial Memorandum of Law, was never reached, because the exercise of the option was never established. Section 3-307(2) of the Uniform Commercial Code states unequivocally that:

> "[w]hen signatures are admitted or established, production of the instrument entitles the holder to recover on it unless the defendant establishes a defense."

Sarbacher never challenged the genuineness of the note and, indeed, affirmed on several instances in the pleadings and at trial that

> "[t]here is no dispute but that the plaintiff executed a note and deed of trust to secure said note . . ." *Statement of Undisputed Material Facts* Under Rule 9 in Support of Plaintiff's Motion for Summary Judgment, April 29, 1966.

The effect of this is clear in the instant case:

> ". . . Once signatures are proved or admitted the holder makes out his case by mere production of the instrument, and is entitled to recover in the absence of any further evidence. The [party challenging the note] has the burden of establishing any and all defenses, not only in the first instance, but by a preponderance of the total evidence." *Uniform Commercial Code*, Official Code Comment, Section 3-307 at ¶ 2.

The testimony of Palmer clearly established the non-exercise of the option in the Agreement of August 14, 1965. As Trustee in Bankruptcy of Hamby Industries, Inc., Palmer was clothed with the qualifications of an expert witness as to the assets of the defunct corporation and its alter ego concerns, having made a thorough investigation of same. He testified unequivocally that neither C. A. Hamby nor Hamby Industries, Inc. had ever obtained a 100% interest in Sarbacher's equity position in the stock of the four insurance companies. The "paper" which he was shown by Sarbacher's counsel, purporting to be a statement of the assets of Hamby Industries, Inc., and purporting to show a 100% ownership in the insurance companies–an unsigned, unauthenticated Xerox copy of a document, for the absence of the original of which Sarbacher was unable to account, which had been objected to by Palmer's counsel at pretrial and at trial and the essential allegations of which were flatly denied by Palmer on the stand–proves nothing.

Appellant's Brief makes much of the fact that Palmer was admittedly unable to recall with precision several relatively trivial items of information from his examination of the books and records of Hamby Industries, Inc., such as whether the general journal reflected the assets of Hamby Industries, Inc. "from month to month", and whether the minutes of the insurance companies which Palmer examined at the office of the Texas Insurance Commissioner reflected Ryan and Brine as directors. This fact, however, has no bearing whatever on Palmer's recollection as to the essential allegation of Sarbacher's claim, i.e., the exercise of the "option" in the contract of August 14, 1964, by C. A. Hamby. As to this point, Palmer testified unequivocally. The exchange between counsel and Palmer is illustrative in this connection.

"Q. Did you ascertain whether or not there were any corporate securities owned by Hamby Industries?

A. Yes.

Q. Now would you tell us what they were?

A. It owned stock in Viclad Industries, Incorporated, and that's V-i-c-l-a-d, and in most of these other bankrupt companies, it owned some of the stock.

* * *

Q. And didn't it also have a 100% ownership of United Life Insurance Company consisting of 2500 shares?

A. *No sir, it didn't.*

* * *

Q. . . . Don't you have the records available as to what stock you took over as part of the assets of Hamby Industries, particularly the four insurance companies?

A. *I didn't take over any stock in the four insurance companies.*

Q. Didn't Hamby Industries own at the time you took over?

A. *No sir.*

Q. Do you know what had happened to that property?

A. Certainly, I investigated that.

Q. Well now, I show you a paper marked Plaintiff's Exhibit 5, Financial Position of Hamby Industries of the 23rd of August, 1965, and ask you if that doesn't represent from your examination of the records the Hamby Industries' situation at that date?

A. (Examining Exhibit 5) *No, sir.*

* * *

Q. Didn't you ascertain that on the 23rd of August 1965, the Hamby Industries were the owners of a 100% of the stock of three insurance companies?

A. No, sir, *I ascertained that they were not.*

Q. On the 23rd of August, 1965?

A. Or ever.

Q. Now I'm talking about the 23rd of August.

THE COURT: Well if it didn't ever, it didn't on that date.

BY MR. FRIEDLANDER:

Q. Well now, are you saying to the Court your investigation disclosed that Hamby Industries never owned 100% of the stock?

A. Yes, sir, that's what I'm saying."

(Tr. 56-58, emphasis added)

Moreover, contrary to the allegations of Appellant's Brief, the Court, when it interrupted to inquire whether or not there was any demand made under the discovery rules that the minutes—*of Hamby Industries, Inc.*—be furnished, was referred by appellant's counsel to the stipulations under the Pretrial Statement to be sure, but a great deal came from that apart from the fact that "everything got involved." The transcript clearly reflects that the stipulation concerned not minutes of Hamby Industries, Inc., but of the four insurance companies; that Palmer's counsel agreed to produce them for use at trial "*if available*"; that such minutes as were available to Palmer were forwarded under date of February 16, 1970, to Sarbacher's counsel; that "they do not contain any information" according to counsel's own statement; that those minutes of the August meetings of the insurance companies not produced were not "available" to Palmer for the simple reason, as the Court observed, that the insurance

companies (and their books and records) had been taken over by a receiver for the Texas Insurance Commissioner [Tr. 62-64] and finally, that much of the testimony which appellant now claims should not have been allowed came in response to appellant's questions on cross-examination rather than on direct examination by Palmer's counsel.

[BY MR. FRIEDLANDER]

"Q. Was there any reason why they weren't brought here?

A. Well, these records are all voluminous. I came up . . .

Q. How voluminous were the minutes of August 1965 *of Hamby Industries*?

THE COURT: Well, was he asked, was there any demand made under our discovery rules that the minutes be furnished?

MR. LASKEY: Not to my knowledge.

MR. FRIEDLANDER: Your Honor will see further stipulations under the Pretrial Statement.

THE COURT: What does it say?

MR. FRIEDLANDER: "Counsel for the intervening defendant agrees he will produce for use at the trial, if available, the following . . .' I am just reading from it.

THE COURT: Well now, wait a minute.

MR. LASKEY: The August minutes, my associate advises me, were asked for and were furnished.

MR. FRIEDLANDER: No.

MR. LASKEY: Well now, wait a minute, Mr. Friedlander.

THE COURT: Let's find out about that (perusing the Court's file). You're talking about the minutes

of the meeting of August *of the insurance companies*, how would he have those?

MR. FRIEDLANDER: And the record in the insurance company's file showing assumption of complete, as contended by plaintiff to show complete control by Hamby.

THE COURT: This office wouldn't have the insurance companies' file.

MR. FRIEDLANDER: Why, of course, if your Honor please, they took over the insurance companies, Hamby did, why wouldn't they have those records?

THE COURT: I thought the insurance companies had been taken over by a receiver.

MR. FRIEDLANDER: A receiver—I'll get this clear, if I can—the receiver for the Insurance Commissioner took over in September of 1965 (to witness) is that what you said?

WITNESS: About thirty days after Hamby Industries bought these notes.

THE COURT: Well, wouldn't he take over all the books and records?

MR. FRIEDLANDER: I wouldn't think so.

THE COURT: What?

MR. FRIEDLANDER: I wouldn't think he'd take over Hamby's books and records.

THE COURT: *You didn't say Hamby you said insurance companies' minutes.*

MR. LASKEY: Under date of February 16, 1970, I wrote Mr. Friedlander that in accordance with discussions at pretrial of this matter, enclosed are copies of the only minutes of the insurance companies for the month of August, 1965 which are in our possession.

> MR. FRIEDLANDER: *And they do not contain any information*. I think, if your Honor pleases, in the interest of continuity here that I will continue, if you don't mind."
>
> (Tr. 62-64 emphasis added)

In short, it is clear that the Court's decision was not so much based on testimony of Palmer, hearsay or otherwise, as on the complete lack of competent testimony on the part of Sarbacher tending to establish his defense on the note and deed of trust. Since the burden of proof of such a defense is unequivocally placed upon the party challenging his liability on an admittedly genuine instrument, the court had no alternative but to rule as it did.

"Establishment" of a defense as required by UCC 3-307 (D.C. Code, 28:3-307) means that ". . . a defendant must do more than merely suggest a defense; he must come forward with some proof." *Manzon v. Greenwald* (D. C. Mun. App. 1958) 145 A.2d 575; *Isard v. Appelstein* (D.C. Mun. App. 1958) 144 A.2d 925. "Suggestion of a possible defense is no substitute for the production of competent evidence to sustain the burden of establishing a defense." *Dollak v. Educational Aids Company* (D. C. Mun. App. 1965) 214 A.2d 481.

Indeed, given the clear import of the statutory and case authority in this area, it is readily apparent that if the Court erred at all, it was on the side of caution, in denying (". . . for the time being . . .", Tr. 37) Palmer's motion for a trial finding at the close of plaintiff's case.

II

APPELLEE'S RECOVERY HEREIN IS NOT DEPENDENT UPON THE COURT'S HOLDING THAT, AS TRUSTEE IN BANKRUPTCY, HE WAS CLOTHED WITH ALL THE RIGHTS OF A HOLDER IN DUE COURSE AS TO THE NOTE INVOLVED IN THIS CASE.

Appellant's argument that Palmer was not clothed with all the rights of a holder in due course as to the note involved in this case presumes the establishment by Sarbacher of the defense which he asserted on the note. But this was never done. In light of this crucial fact, there is no need to burden the court with the arguments presented below in Palmer's Trial Memorandum of Law on a question never reached at trial.

It is perfectly clear under the Uniform Commercial Code (District of Columbia Code [1967 Edition] Section 28:3-307, in Comment 3) that:

> "Until it is shown that a defense exists the issue as to whether the holder is a holder in due course does not arise. In the absence of a defense any holder is entitled to recover and there is no occasion to say that he is deemed prima facie to be the holder in due course [as under the Uniform Negotiable Instruments Law, superseded by the UCC] . . ."

Moreover, the Court *didn't* find appellee Palmer to be a holder in due course, merely that he was "*clothed with all the rights of a holder in due course*" (Findings of Fact and Conclusions of Law, p. 6, ¶ 1) which is, of course, an entirely different thing and which is not essential to Palmer's recovery anyway, as shown above.

III

IT WAS NOT ERROR FOR THE COURT TO REFUSE TO ALLOW TIME FOR SARBACHER TO PRODUCE FURTHER TESTIMONY.

Appellant contends that denial of his motion for a continuance to produce a witness as to a fundamental issue of his case was error because the Court's admitted discretion as to the granting or denial of the motion was not, in appellant's view, "exercised in the interests of justice." (Appellant's Br., 17).

In support of this contention, appellant cites the Court to the cases of *Cornwell v. Cornwell*, 73 App. D.C. 233, 118 F.2d 396 (1941) and *Harrah v. Morgenthau*, 67 App. D.C. 119, 89 F.2d 863 (1937), two cases in which this Court held denial of a continuance to be reversible error. Appellee can agree at least that "the facts of th[ose] case[s] are different from ours" (Appellant's Br., 18) but is unable to make the logical leap from that somewhat unstartling premise to the conclusion that "the end result is the same" here. To the extent that the holdings in *Cornwell* and *Harrah* are dependent upon their highly extraordinary facts, the end result is nothing like the same here. And both holdings are explicitly bottomed on the inability in each case of a *party*—who was his own most crucial and material witness—to appear at trial because of grave medical incapacitation.

In *Cornwell*, the court was moved by several physicians' affidavits attesting in quite unequivocal terms to the party's utter physical and mental incapacity to be present at trial, *Cornwell v. Cornwell*, supra, 73 App. D.C. at 235, 118 F.2d at 398, and in *Harrah*, the court found that:

> ". . . here we are confronted with a case in which . . . the plaintiff was so seriously ill that *his appearance in Court would probably have resulted in his*

> *death.*" *Harrah v. Morgenthau, supra*, 67 App. D.C. at 130, 89 F.2d at 864 (Emphasis added).

Certainly nothing like those facts obtained here either as to the plaintiff Sarbacher or the purported witness he sought the continuance to produce. It is manifest, therefore, that the denial of Sarbacher's motion was well within the Court's discretion and that the Court did not in any way abuse that discretion. Absent such abuse, the Court's ruling is not subject to reversal. See, *inter alia, Fidelity & Deposit Co. v. L. Buchi & Son*, 189 U.S. 135, 47 L. ed. 744, 23 S. Ct. 582 (1903); *Thomas v. U.S.*, 74 App. D.C. 167, 121 F.2d 905 (1941); *Chung Wing Ping v. Kennedy*, 111 U.S. App. D.C. 106, 294 F.2d 735 (1961); cert. den. 368 U.S. 938, 7 L. ed. 2d 337, 82 S. Ct. 380 (1961); *Kelberine v. Societe Internationale, Etc.*, 124 U.S. App. D.C. 257, 363 F.2d 989 (1966), cert. den. 385 U.S. 989, 17 L. ed. 2d 450, 87 S. Ct. 595 (1966), reh. den. 383 U.S. 1044, 17 L. ed. 2d 688, 87 S. Ct. 770 (1967).

The rule is aptly stated by this Court in *Sechrist v. Bryant*, 52 App. D.C. 286, 289, 286 F. 456, 459 (1923), where the Court in upholding a denial of a motion for continuance (which had the effect of preventing any hearing at all for the movant) said:

> "That any litigant should be denied a hearing is most regrettable, inasmuch as the denial may result in serious actual wrong. Nevertheless the rules which determine the right to a continuance are designed to secure the greatest good to the greatest number, in accordance with law, and as such rules cannot be sacrificed to sympathy, without putting a premium on neglect, want of foresight, and inexcusable delays, they must be enforced in the interest of an effective administration of justice."

Further, much of appellant's argument in this connection is ill-founded because it rests upon the invalid premise that the Court

based its decision on "hearsay testimony" by Palmer. As shown above, the Court clearly based its decision on the fact that Sarbacher failed to meet his burden of establishing by competent evidence the defense which he asserted against the note.

It is difficult to believe that the appellant is actually serious in asserting "that there had been no real contest about the *fact* that the option had been exercised" and that "[i]t was obvious that no issue of fact really existed as to the exercise of the option." The Pretrial Order in this case clearly indicates that:

> "THE INTERVENOR DEFENDANT PALMER . . .
> . . . denies C. A. Hamby either for himself or for Hamby Industries, Inc. or for both of them exercised the option in [the] Agreement of Aug. 14, 1965 so as to obligate them or either of them to return to or cause to be returned to P the collateral referred to in said Agreement." (Pretrial Order, 4).

Granting Sarbacher's Motion for additional time would have been more in the nature of abuse than denial of same, given this state of the pleadings. The Court could not be moved by representations of Sarbacher's counsel as to what a putative witness, contacted for the first time in such regard by Sarbacher on the day of trial and after the close of his case, informed him by telephone that his testimony might establish, if allowed. Nor could there be any reason to allow a continuance to produce a document in the sole possession and control of Sarbacher during the entire five-year pendency of this suit and only then "remembered", absent a showing that the document could not theretofore have been discovered and produced by the exercise of due diligence. The provisions of the Pretrial Order make it perfectly clear that Sarbacher's counsel was fully apprised of the issues to be tried and it will not lie in Sarbacher's mouth to say that he could not have known of the importance of such a document prior to trial.

The observation that Sarbacher had attempted on two occasions to put the case on the Ready Calendar cuts both ways. As the Court aptly observed, the case would have had to be prepared regardless of where it was tried and, it goes without saying, regardless of *when* it was tried (Tr. 68). The point is that the case should have been prepared prior to trial. That was the reason for Palmer's opposition to the placing of the case on the Ready Calendar on the prior occasions. Sarbacher was ill-prepared to try the case five years after filing it. There is surely no reason to believe he would have been more ready three or four years earlier.

IV

THE TRIAL COURT'S DENIAL OF SARBACHER'S MOTION FOR A NEW TRIAL WAS NOT ERROR

Appellant's argument that the Court abused its discretion in denying Sarbacher's Motion for a New Trial is again based on an invalid premise, i.e., that from reviewing the documentary material submitted in support of the Motion "there can be no doubt but that the decision of the Court was incorrect on the facts." Aside from the fact that there can be plenty of doubt, the assertion is simply irrelevant to the question as to whether the denial of the Motion for a New Trial was appropriate.

There are few principles more firmly established in the law than that

> "To warrant a new trial the evidence must not have been known to the movant at the time of the trial; and, moreover, the movant must have been excusably ignorant of the facts, i.e., the evidence must be such that it was not discover*able* by diligent search." 6A Moore, *Federal Practice* (2d Edition, 1966) Section 5908 [3] at 3785, and authorities there cited. (Emphasis added.)

A long line of authorities, among which can be found representative decisions from virtually every jurisdiction, have firmly established that the showing required is not merely that evidence proferred after trial as "newly discovered" was not, in fact, discovered prior to or during trial but that it was, at such earlier time, undiscover*able*.

One of the leading cases in this area is that of *Lewis v. Kepple*, (D.C.W.D. Pa., 1960) 185 F. Supp. 884, 888, in which Judge McIlvaine observes:

> "The plaintiffs . . . seek a new trial on the grounds of after-discovered evidence . . . However, this was evidence that was in plaintiffs' files at all times and which it simply failed to discover although it was always available to them, and plaintiffs admit this. This evidence could have been produced at the trial by the exercise of reasonable diligence. The mere fact that plaintiffs' employees did not discover this and bring it to the attention of plaintiffs' attorney is not a sufficient reason in law to grant a new trial."

In a per curiam opinion handed down in 1960, the Fourth Circuit reviewed a denial of a motion for new trial by defendant, which was supported by the affidavits of three persons which plainly contradicted the plaintiff's evidence and the district court's findings.

> "[Defendant] knew, . . . of the three witnesses whose affidavits he now tenders, but he did not produce them at the trial. He offers no explanation of his failure to produce one of them. The other two, he says, were out of the state at the time of the trial but the record does not show what, if any, effort he made to locate them and obtain their testimony.
>
> We think the district judge properly denied the motion upon the ground that the defendant had not shown due diligence to discover this evidence . . . ."
> *Stiers v. Martin*, 277 F.2d 737 (1960).

And in 1962, Senior District Judge Leahy of the Delaware District Court, quoting at length from his earlier decision in *Eastern Airlines v. United States* (D.C. Dela., 1953) 110 F. Supp. 499, 500, reiterated that Court's "principles governing disposition of a plaintiff's motion for a new trial" as follows:

> "'. . . Newly discovered evidence refers to evidence of facts existing at the time of trial of which the aggrieved party was excusably ignorant. *The application for a new trial will be denied where the degree of activity which led to the discovery of the evidence post-trial would have produced it had it been exercised prior to trial* . . . . Failure of a party to call available witnesses to meet issues raised at trial does not justify the reopening of a case after decision upon the merits.'" *Securities and Exchange Commission v. Glass Marine Industries, Inc.* (D.C. Dela., 1962) 208 F. Supp. 727 at 743-744 (Emphasis added).

The admonishment of Judge Leahy has particular application to the instant case because Sarbacher's failure to exercise due diligence is evident both with respect to his failure to call certain witnesses at trial and to discover a document (which at all times reposed in his own files) until after trial. As in *Lewis v. Kepple, supra*, he cannot, therefore, be heard to say that he exercised reasonable diligence to discover evidence particularly within his own control prior to trial. It is manifest, moreover, that had he done so during the period of approximately one year during which trial in this Court was a foregone conclusion by virtue of the Order of June 14, 1968, that evidence would have been discovered in time to have been brought out at the trial. *Cf., Royal Air Properties, Inc. v. Smith* (9th Cir., 1964) 333 F.2d 568, 572.

One recent opinion on this question is that of the Fifth Circuit Court of Appeals in the case of *Lloyd v. Gill*, 406 F.2d 585, 587

(1969). There the Court held that a motion for new trial on the basis of newly discovered evidence could not be granted unless (a) the new evidence would most likely change the result, (b) the facts have been discovered since the trial and "could not by the exercise of due diligence have been discovered earlier," and (c) such facts are not merely cumulative or impeaching. [Citing *Brown v. Schwartz* (5th Cir., 1947) 164 F.2d 151, 152; *English v. Mattson* (5th Cir., 1954) 214 F.2d 406, 409.]

> "The so-called newly discovered evidence upon which appellants' motion for new trial was based was not shown to have been undiscovered and *unavailable* at the time of trial or *that it could not have been discovered earlier by proper diligence.*"

Thus, Sarbacher's Motion and Supplemental Points and Authorities requesting amendment thereof could only be denied. In the final analysis, of course, we come back once again to Sarbacher's rather unpersuasive protestation that he anticipated this case would be tried not in the court below but in Texas. It will bear repeating in this connection (1) that this case was removed from the calendar pursuant to Sarbacher's motion, not Palmer's; (2) that the Order entered by this Court, per Curran, C.J., pursuant to that motion continued this cause" . . . pending the disposition of the companion case in Texas– . . . *or until the 2nd day of January, 1969, whichever is sooner* . . ." (emphasis added) and (3) that, the case having been called on November 5, 1969, it was placed on the Ready Calendar pursuant to a Certificate of Readiness written in longhand and signed by Sarbacher's counsel.

The Court is cited by appellant to the case of *Wilson v. Beckett,* 79 U.S. App. D.C. 94, 143 F.2d 19 (1944), for the proposition that ". . . a judge is no mere umpire"; that one of his important functions is to see that the facts are fully developed, and that "he necessarily

has a wide discretion in the matter" of granting or denying a motion for a new trial. The principle is sound and appellee has never argued otherwise, but it is difficult to see how Sarbacher's case is aided by it, especially when the particular case in which it is articulated is analyzed. In *Wilson*, the plaintiff sought a short continuance in order to produce a witness *who had been notified that she was to testify and who apparently planned to do so,* but who had been taken ill on the first day of trial and was unable to appear as scheduled.

She was to have testified on a question as to which the other testimony "had been along at least two divergent lines, one favorable and one unfavorable" to plaintiff's position. It is surely worth noting, as appellant does not, that this Court affirmed, finding no abuse of discretion. Moreover, while it did indicate its opinion that "it would have been better practice for the court *either to satisfy itself by questioning counsel*, that . . . [the] testimony would not affect the result of the case, or to grant a *brief* continuance so that appellant might take her deposition" it announced that:

> ". . . we are not prepared to rule that the court's failure to do either of these things was an abuse of discretion."

It is perhaps not too much to say that the applicability of the *Wilson* case is attenuated to the point of non-existence here, where the purported witness had never been contacted by appellant until after the close of his case at trial, where the trial judge made a valiant attempt to elicit from Sarbacher's counsel how the witness's testimony would affect the case, if at all, and was obviously satisfied that it would not (Tr. 68-69) and where the witness' absence in the first place was attributable not to an unforeseen and unavoidable illness of the witness but to the manifest failure of Sarbacher to exercise due diligence in preparing for the trial which had been a

foregone conclusion for at least a year and a half. Especially since the case deals not with a motion for new trial on the basis of newly discovered evidence but with a request for a continuance to bring in a witness (and thus might more appropriately be cited in support of appellant's argument on that point) and where no abuse of discretion was found anyway.

Appellant argues that the Court abused its discretion in denying the Motion for a New Trial because by so doing it permitted "a clear miscarriage of justice under circumstances which were unusual." Again, the "miscarriage of justice" complained of, is bottomed on the assertion that the Court's decision was based upon hearsay testimony by Palmer, an assertion clearly shown to be incorrect above.

It is difficult to perceive wherein the Virginia State case authorities cited by Sarbacher in support of his argument overcome the clear requirements of Rule 59, Federal Rules of Civil Procedure, requiring the exercise by plaintiff of due diligence in the premises in order to justify the granting of a motion for a new trial on the basis of newly discovered evidence. It is abundantly clear that to the extent the newly discovered document could, in fact, constitute evidence, its existence was known to the plaintiff at the time of trial. It was, furthermore, in plaintiff's own file, admittedly known to plaintiff, thus not "undiscover*able*" within the rubric of Rule 59, and should have been known to be of importance in light of the state of the pleadings, particularly, the Pretrial Order.

CONCLUSION

WHEREFORE, appellant's arguments having been considered at length and shown to be without merit, the judgment appealed from should be affirmed.

Respectfully submitted,

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